

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1059**

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**Introduced by Assembly Member Silva**

February 27, 2009

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An act to amend Sections 7113.5, 17027, 17028, 17511.4, 17550.52, 17919, 20021, 22903, and 24071 of the Business and Professions Code, to amend Sections 1785.13, 1786.18, 1788.14, and 1812.206 of the Civil Code, to amend Section 703.130 of the Code of Civil Procedure, to amend Sections 1400, 1401, 1402, 1403, 6110, 6610, 8110, 8610, 9650, 9680, 12560, 12630, 15642, 23005, 25103, 25248, and 28710 of the Corporations Code, to amend Sections 867, 1203, 1781, 1889, 6152, 12307.2, 16202, 16902, 17415, 18477, 31709, 34109, and 50319 of the Financial Code, to amend Section 1058 of the Fish and Game Code, to amend Section 58503.1 of the Food and Agricultural Code, to amend Section 65863.7 and 65863.12 of the Government Code, to amend Section 1358.4, 1793.62, 129174.1, 25169.3, 25245, 25359.5, 25359.6, and 25396 of the Health and Safety Code, to amend Section 10192.4 and 11655 of the Insurance Code, to amend Section 15643 of the Probate Code, to amend Section 4107 of the Public Contract Code, to amend Section 11923 of the Revenue and Taxation Code, to amend Section 9185 of the Streets and Highways Code, and to amend Section 9859 of the Vehicle Code, relating to bankruptcy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1059, as amended, Silva. Bankruptcy.

Existing law contains various provisions related to the filing of bankruptcy by an individual or corporation under federal bankruptcy law.

This bill would make technical changes and changes to conform with federal bankruptcy law to correct obsolete references.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 7113.5 of the Business and Professions  
2 Code is amended to read:

3 7113.5. The avoidance or settlement by a licensee for less than  
4 the full amount of the lawful obligations of the licensee incurred  
5 as a contractor, whether by (a) composition, arrangement, or  
6 reorganization with creditors under state law, (b) composition,  
7 arrangement, or reorganization with creditors under any agreement  
8 or understanding, (c) receivership as provided in Chapter 5  
9 (commencing at Section 564) of Title 7 of Part 2 of the Code of  
10 Civil Procedure, (d) assignment for the benefit of creditors,  
11 (e) trusteeship, or (f) dissolution, constitutes a cause for  
12 disciplinary action.

13 This section shall not apply to an individual settlement of the  
14 obligation of a licensee by the licensee with a creditor that is not  
15 a part of or in connection with a settlement with other creditors of  
16 the licensee.

17 No disciplinary action shall be commenced against a licensee  
18 for discharge of or settling in bankruptcy under federal law, the  
19 licensee's lawful obligations incurred as a contractor for less than  
20 the full amount of the obligations, so long as the licensee satisfies  
21 all of those lawful obligations, to the extent the obligations are not  
22 discharged under federal law.

23 SEC. 2. Section 17027 of the Business and Professions Code  
24 is amended to read:

25 17027. In establishing the cost of a given article or product to  
26 the distributor and vendor, the invoice cost of the article or product  
27 purchased at a forced, bankruptcy, closeout sale, or other sale  
28 outside of the ordinary channels of trade may not be used as a basis  
29 for justifying a price lower than one based upon the replacement  
30 cost as of the date of the sale of the article or product replaced  
31 through the ordinary channels of trade, unless the article or product  
32 is kept separate from goods purchased in the ordinary channels of  
33 trade and unless the article or product is advertised and sold as

1 merchandise purchased at a forced, bankruptcy, closeout sale, or  
2 by means other than through the ordinary channels of trade.

3 Such advertising shall state the conditions under which the goods  
4 were purchased, and the quantity of the merchandise to be sold or  
5 offered for sale.

6 SEC. 3. Section 17028 of the Business and Professions Code  
7 is amended to read:

8 17028. "Ordinary channels of trade" means those ordinary,  
9 regular and daily transactions in the mercantile trade whereby title  
10 to an article or product, in no way damaged or deteriorated, is  
11 transferred from one person to another.

12 "Ordinary channels of trade" does not include bankruptcy sales  
13 of stocks, closeout goods, dents, sales of goods bought from a  
14 business or merchant retiring from business, fire sales and sales  
15 of damaged or deteriorated goods, which damage or deterioration  
16 results from any cause whatsoever. This listing is not all inclusive  
17 but as example only.

18 SEC. 4. Section 17511.4 of the Business and Professions Code  
19 is amended to read:

20 17511.4. Each filing pursuant to Section 17511.3 shall contain  
21 the following information:

22 (a) The name or names of the seller, including the name under  
23 which the seller is doing or intends to do business, if different from  
24 the name of the seller, and the name of any parent or affiliated  
25 organization (1) that will engage in business transactions with  
26 purchasers relating to sales solicited by the seller or (2) that accepts  
27 responsibility for statements made by, or acts of, the seller relating  
28 to sales solicited by the seller.

29 (b) The seller's business form and place of organization and, if  
30 the seller is a corporation, a copy of its articles of incorporation  
31 and bylaws and amendments thereto, or, if a partnership, a copy  
32 of the partnership agreement, or if operating under a fictitious  
33 business name, the location where the fictitious name has been  
34 registered. All the same information shall be included for any  
35 parent or affiliated organization disclosed pursuant to subdivision  
36 (a).

37 (c) The complete street address or addresses of all locations,  
38 designating the principal location from which the telephonic seller  
39 will be conducting business. If the principal business location of  
40 the seller is not in this state, then the seller shall also designate

1 which of its locations within this state is its main location in the  
2 state.

3 (d) A listing of all telephone numbers to be used by the seller  
4 and the address where each telephone using each of these telephone  
5 numbers is located.

6 (e) The name of, and the office held by, the seller's officers,  
7 directors, trustees, general and limited partners, sole proprietor,  
8 and owners, as the case may be, and the names of those persons  
9 who have management responsibilities in connection with the  
10 seller's business activities.

11 (f) The complete address of the principal residence, the date of  
12 birth, and the driver's license number and state of issuance of each  
13 of the persons whose names are disclosed pursuant to subdivision  
14 (e).

15 (g) The name and principal residence address of each person  
16 the telephonic seller leaves in charge at each location from which  
17 the seller does business in this state, as defined in subdivision (a)  
18 of Section 17511.3, and the business location which each of these  
19 persons is or will be in charge of.

20 (h) A statement, meeting the requirements of this subdivision,  
21 as to both the seller, whether a corporation, partnership, firm,  
22 association, joint venture, or any other type of business entity (and  
23 whether identified pursuant to subdivision (e) or (g) or not), and  
24 as to any person identified pursuant to subdivision (e) or (g) who:

25 (1) Has been convicted of a felony or misdemeanor involving  
26 an alleged violation of this article, or fraud, theft, embezzlement,  
27 fraudulent conversion, or misappropriation of property. For  
28 purposes of this paragraph, a plea of nolo contendere is a  
29 conviction.

30 (2) Has had entered against him or her a final judgment or order  
31 in a civil or administrative action, including a stipulated judgment  
32 or order, if the complaint or petition in the civil or administrative  
33 action alleged acts constituting a violation of this article, fraud,  
34 theft, embezzlement, fraudulent conversion, or misappropriation  
35 of property, the use of untrue or misleading representations in an  
36 attempt to sell or dispose of real or personal property, or the use  
37 of unfair, unlawful, or deceptive business practices.

38 (3) Is subject to any currently effective injunction or restrictive  
39 court order relating to business activity as the result of an action  
40 brought by a federal, state, or local public agency or unit thereof,

1 including, but not limited to, an action affecting any vocational  
2 license.

3 (4) Has at any time during the previous seven tax years been  
4 the subject of an order for relief in bankruptcy, been reorganized  
5 due to insolvency, or been a principal, director, officer, trustee,  
6 general or limited partner, or had management responsibilities of  
7 any other corporation, partnership, joint venture, or business entity,  
8 that has been the subject of an order for relief in bankruptcy during  
9 or within one year after the period that the person held that position.

10 For purposes of paragraphs (1), (2), and (3), the statement  
11 required by this subdivision shall identify the seller or person, the  
12 court or administrative agency rendering the conviction, judgment,  
13 or order, the docket number of the matter, the date of the  
14 conviction, judgment, or order, and the name of the governmental  
15 agency, if any, that brought the action resulting in the conviction,  
16 judgment, or order. For purposes of paragraph (4), the statement  
17 required by this subdivision shall include the name and location  
18 of the seller or person that has been the subject of an order for  
19 relief in bankruptcy, or reorganized due to insolvency, and shall  
20 include the date thereof, the court which exercised jurisdiction,  
21 and the docket number of the matter.

22 (i) A list of the names, principal residence addresses, the date  
23 of birth, and the driver's license number and state of issuance  
24 thereof, of salespersons who solicit on behalf of the telephonic  
25 seller and the names the salespersons use while so soliciting. No  
26 salesperson shall use the same name as used by any other  
27 salesperson soliciting for the telephonic seller and no telephonic  
28 seller shall permit a salesperson to use the same name as used by  
29 any other salesperson soliciting for the telephonic seller.

30 (j) A description of the items the seller is offering for sale and  
31 a copy of all sales scripts the telephonic seller requires salespersons  
32 to use when soliciting prospective purchasers, or if no sales script  
33 is required to be used, a statement to that effect.

34 (k) A copy of all sales information and literature (including, but  
35 not limited to, scripts, outlines, instructions, and information  
36 regarding how to conduct telephonic sales, sample introductions,  
37 sample closings, product information, and contest or  
38 premium-award information) provided by the telephonic seller to  
39 salespersons or of which the seller informs salespersons, and a

1 copy of all written materials the seller sends to any prospective or  
2 actual purchaser.

3 (l) If the telephonic seller represents or implies, or directs  
4 salespersons to represent or imply, to purchasers that the purchaser  
5 will receive certain specific items (including a certificate of any  
6 type which the purchaser must redeem to obtain the item described  
7 in the certificate) or one or more items from among designated  
8 items, whether the items are denominated as gifts, premiums,  
9 bonuses, prizes, or otherwise, the filing shall include the following:

10 (1) A list of the items offered.

11 (2) The value or worth of each item described to prospective  
12 purchasers and the basis for the valuation.

13 (3) The price paid by the telephonic seller to its supplier for  
14 each of these items and the name, address, and telephone number  
15 of each item's supplier.

16 (4) If the purchaser is to receive fewer than all of the items  
17 described by the seller, the filing shall include the following:

18 (A) The manner in which the telephonic seller decides which  
19 item or items a particular prospective purchaser is to receive.

20 (B) The odds a single prospective purchaser has of receiving  
21 each described item.

22 (C) The name and address of each recipient who has, during  
23 the preceding 12 months (or if the seller has not been in business  
24 that long, during the period the telephonic seller has been in  
25 business) received the item having the greatest value and the item  
26 with the smallest odds of being received.

27 (5) All rules, regulations, terms, and conditions a prospective  
28 purchaser must meet in order to receive the item.

29 (m) If the telephonic seller is offering to sell any metal, stone,  
30 or mineral, the filing shall include the following:

31 (1) The name, address, and telephone number of each of the  
32 seller's suppliers and a description of each metal, stone, or mineral  
33 provided by the supplier.

34 (2) If possession of any metal, stone, or mineral is to be retained  
35 by the seller or will not be transferred to the purchaser until the  
36 purchaser has paid in full, the filing shall include the following:

37 (A) The address of each location where the metal, stone, or  
38 mineral will be kept.

39 (B) If not kept on premises owned by the seller or at an address  
40 or addresses set forth in compliance with subdivision (c), the name

1 of the owner of the business at which the metal, stone, or mineral  
2 will be kept.

3 (C) A copy of any contract or other document which evidences  
4 the seller's right to store the metal, stone, or mineral at the address  
5 or addresses designated pursuant to subparagraph (A).

6 (3) If the seller is not selling the metal, stone, or mineral from  
7 its own inventory, but instead purchases the metal, stone, or mineral  
8 to fill orders taken from purchasers, the filing shall include copies  
9 of all contracts or other documents evidencing the seller's ability  
10 to call upon suppliers to fill the seller's orders.

11 (4) If the seller represents to purchasers that the seller has  
12 insurance or a surety bond of any type relating to a purchaser's  
13 purchase of any metal, stone, or mineral from the seller, the filing  
14 shall include a complete copy of all these insurance policies and  
15 bonds.

16 (5) If the seller makes any representation as to the earning or  
17 profit potential of purchases of any metal, stone, or mineral, the  
18 filing shall include data to substantiate the claims made. If the  
19 representation relates to previous sales made by the seller or a  
20 related entity, substantiating data shall be based on the experiences  
21 of at least 50 percent of the persons who have purchased the  
22 particular metal, stone, or mineral from the seller or related entity  
23 during the preceding six months (or if the seller or related entity  
24 has not been in business that long, during the period the seller or  
25 related entity has been in business) and shall include the raw data  
26 upon which the representation is based, including, but not limited  
27 to, all of the following:

28 (A) The length of time the seller or related entity has been selling  
29 the particular metal, stone, or mineral being offered.

30 (B) The number of purchasers thereof from the seller or related  
31 entity known to the seller or related entity to have made at least  
32 the same earnings or profit as those represented.

33 (C) The percentage that the number disclosed pursuant to  
34 subparagraph (B) represents of the total number of purchasers from  
35 the seller or related entity of the particular metal, stone, or mineral.

36 (n) If the telephonic seller is offering to sell an interest in oil,  
37 gas, or mineral fields, wells, or exploration sites, the filing shall  
38 include disclosure of the following:

39 (1) The seller's ownership interest, if any, in each field, well,  
40 or site being offered for sale.

1 (2) The total number of interests to be sold in each field, well,  
2 or site being offered for sale.

3 (3) If, in selling an interest in any particular field, well, or site,  
4 reference is made to an investigation of these fields, wells, or sites  
5 by the seller or anyone else, the filing shall include the following:

6 (A) The name, business address, telephone number, and  
7 professional credentials of the person or persons who made the  
8 investigation.

9 (B) A copy of the report and other documents relating to the  
10 investigation prepared by the person or persons.

11 (4) If the seller makes any representation as to the earning or  
12 profit potential of purchases of any interest in these fields, wells,  
13 or sites, the filing shall include data to substantiate the claims  
14 made. If the representation relates to previous sales made by the  
15 seller or a related entity, the substantiating data shall be based on  
16 the experiences of at least 50 percent of the purchasers of the  
17 particular interests from the seller or the related entity during the  
18 preceding six months (or if the seller has not been in business that  
19 long, during the period the seller or related entity has been in  
20 business) and shall include the raw data upon which the  
21 representation is based, including, but not limited to, all of the  
22 following:

23 (A) The length of time the seller or related entity has been selling  
24 the particular interests in the fields, wells, or sites being offered.

25 (B) The number of purchasers of the particular interests from  
26 the seller or related entity known to the seller to have made, at  
27 least the same earnings as those represented.

28 (C) The percentage the number disclosed pursuant to  
29 subparagraph (B) represents of the total number of purchasers of  
30 the particular interests from the seller or related entity.

31 (o) The name and address of the telephonic seller's agent in this  
32 state, other than the Attorney General, authorized to receive service  
33 of process in this state.

34 (p) If a person, based on paragraph (19) of subdivision (c) of  
35 Section 17511.1, claims an exemption from having to file the  
36 information required by subdivisions (a) to (o), inclusive, the  
37 person shall file, on a form provided by the Attorney General, the  
38 following information:



1 (1) The name or names of the person claiming the exemption,  
2 including the name under which the person is doing or intends to  
3 do business.

4 (2) The person's business form, and place of organization,  
5 whether corporate or otherwise; or, if operating under a fictitious  
6 business name, the location where the fictitious name has been  
7 registered.

8 (3) The complete street address of the person's retail locations,  
9 and telephone numbers located therein and a statement as to how  
10 long the person has been selling at retail from each location.

11 (4) A copy of the person's currently valid business license.

12 (5) A statement reflecting the dollar amount of the person's  
13 total retail sales during the 12 months preceding the filing.

14 (6) A statement reflecting the dollar amount of the person's  
15 sales made telephonically during the 12 months preceding the  
16 filing.

17 The filing shall be verified by a declaration signed under penalty  
18 of perjury by each principal of the person claiming the exemption.  
19 The declaration shall specify the date and location of signing.

20 If a person filing pursuant to subdivision (p) makes any  
21 representation to a prospective purchaser as to the historical  
22 movements or changes in the price or value of any coin or bullion,  
23 the person shall maintain in its records sufficient data to  
24 substantiate each representation. This data shall be retained in the  
25 person's records for a period of at least three years after the last  
26 date on which a representation is made and shall be made available  
27 for inspection upon request by any governmental agency at each  
28 of its business locations.

29 (q) If the telephonic seller represents or implies, or directs  
30 salespersons to represent or imply, that the telephonic seller can,  
31 or may be able to, make a loan or arrange or assist in arranging a  
32 loan or to assist in providing information which may lead to the  
33 obtaining of a loan, the filing shall include the following:

34 (1) The names and addresses of all persons who, in the previous  
35 24 months, lent money to those who responded to the seller's  
36 solicitations or lent money to the telephonic seller for the seller to  
37 lend to those who responded to the seller's representations that it  
38 could make a loan or arrange or assist in arranging a loan or could  
39 assist in providing information which could lead to the obtaining  
40 of a loan.

(2) The names and addresses of all persons who, in the previous 24 months, lent money to those who responded to the solicitations of the seller's predecessor or the seller's officers, owners, or those persons having present management responsibilities or to companies with which they were associated, that they could make a loan or arrange or assist in arranging a loan or could assist in providing information which could lead to the obtaining of a loan or lent money to the seller's predecessor or the seller's officers, owners, or those persons having present management responsibilities or to companies with which they were associated for them to lend to those who responded to these representations.

(3) The names and addresses of all persons who have informed the telephonic seller that they may be able to lend money, within the next 12 months from the date of this registration, to persons solicited by the seller or to the telephonic seller for the seller to lend to those who respond to the seller's representations that it can make a loan or arrange or assist in arranging a loan or can assist in providing information which can lead to the obtaining of a loan.

(4) Copies of all contracts between the seller and lenders or prospective lenders who may lend money: (A) to the seller to lend to individuals who, in connection with the seller's business activities, respond to the seller's representations that it can make a loan or arrange or assist in arranging a loan or can assist in providing information which can lead to the obtaining of a loan; or (B) directly to persons to whom the seller may represent that it can arrange or assist in providing information which can lead to the obtaining of a loan.

SEC. 5. Section 17550.52 of the Business and Professions Code is amended to read:

17550.52. The Attorney General or his or her delegate may determine that the Travel Consumer Restitution Corporation has failed or ceased to operate upon a finding that any one of the following has occurred with respect to the corporation:

- (a) Was not created.
- (b) Has been dissolved.
- (c) Has ceased to operate.
- (d) Is insolvent or been the subject of an order for relief in bankruptcy.
- (e) Has failed to pay its operating costs.
- (f) Has failed to pay any claim or judgment in a timely manner.

1 (g) Has violated its articles of incorporation or any law of this  
2 state.

3 (h) Has invested its funds in violation of this article.

4 (i) Has not levied assessments as required by this article.

5 (j) Has not diligently decided upon a claim made by a person  
6 aggrieved.

7 (k) Has violated any section of this article.

8 (l) Has neglected or refused to submit its books, papers, and  
9 affairs to the inspection of the office of the Attorney General.

10 SEC. 6. Section 17919 of the Business and Professions Code  
11 is amended to read:

12 17919. (a) A fictitious business name statement may be  
13 executed, filed, and published by the trustee in bankruptcy at any  
14 time after bankruptcy where a failure to comply with the provisions  
15 of this chapter would otherwise preclude the maintenance of an  
16 action to recover any sums due to the debtor or bankruptcy estate  
17 or the partnership of which the debtor or bankruptcy estate was a  
18 member.

19 (b) A fictitious business name statement may be executed, filed,  
20 and published by the conservator, executor, or administrator at  
21 any time after the appointment of a conservator for or death of any  
22 individual or partner where a failure to comply with the provisions  
23 of this chapter would otherwise preclude the maintenance of an  
24 action to recover any sums due the conservatee or deceased person  
25 or the partnership of which he was a member.

26 (c) A fictitious business name statement may be executed, filed,  
27 and published by an assignee or purchaser of the business at any  
28 time after the assignment or sale where a failure to comply with  
29 the provisions of this chapter would otherwise preclude the  
30 maintenance of an action to recover any sums due to the assignee  
31 or purchaser by reason of the assignment or sale.

32 (d) The fictitious business name statement referred to in this  
33 section shall be in substantially the same form as prescribed in  
34 Section 17913, except:

35 (1) The person or persons who were doing business under the  
36 fictitious business name shall be stated as such person or persons  
37 existed (i) immediately prior to the bankruptcy, conservatorship,  
38 or death or the assignment or sale of the business or (ii) at the time  
39 they ceased to do business under the fictitious business name,  
40 whichever is the earlier time.

1 (2) The statement shall include the following additional  
2 sentence: “This statement has been executed pursuant to Section  
3 17919 of the Business and Professions Code.”

4 (3) The person executing the statement shall (i) sign the  
5 statement on behalf of the person or persons formerly doing  
6 business under the fictitious business name, (ii) state his full name  
7 and the street address of his place of business or, if he has none,  
8 of his residence, and (iii) indicate whether he is a trustee in  
9 bankruptcy, conservator, executor, or administrator or assignee or  
10 purchaser of the business.

11 SEC. 7. Section 20021 of the Business and Professions Code  
12 is amended to read:

13 20021. If during the period in which the franchise is in effect,  
14 there occurs any of the following events which is relevant to the  
15 franchise, immediate notice of termination without an opportunity  
16 to cure, shall be deemed reasonable:

17 (a) The franchisee or the business to which the franchise relates  
18 has been the subject of an order for relief in bankruptcy, judicially  
19 determined to be insolvent, all or a substantial part of the assets  
20 thereof are assigned to or for the benefit of any creditor, or the  
21 franchisee admits his inability to pay his debts as they come due;

22 (b) The franchisee abandons the franchise by failing to operate  
23 the business for five consecutive days during which the franchisee  
24 is required to operate the business under the terms of the franchise,  
25 or any shorter period after which it is not unreasonable under the  
26 facts and circumstances for the franchisor to conclude that the  
27 franchisee does not intend to continue to operate the franchise,  
28 unless such failure to operate is due to fire, flood, earthquake or  
29 other similar causes beyond the franchisee’s control;

30 (c) The franchisor and franchisee agree in writing to terminate  
31 the franchise;

32 (d) The franchisee makes any material misrepresentations  
33 relating to the acquisition of the franchise business or the franchisee  
34 engages in conduct which reflects materially and unfavorably upon  
35 the operation and reputation of the franchise business or system;

36 (e) The franchisee fails, for a period of 10 days after notification  
37 of noncompliance, to comply with any federal, state or local law  
38 or regulation applicable to the operation of the franchise;

1 (f) The franchisee, after curing any failure in accordance with  
2 Section 20020 engages in the same noncompliance whether or not  
3 such noncompliance is corrected after notice;

4 (g) The franchisee repeatedly fails to comply with one or more  
5 requirements of the franchise, whether or not corrected after notice;

6 (h) The franchised business or business premises of the franchise  
7 are seized, taken over or foreclosed by a government official in  
8 the exercise of his duties, or seized, taken over, or foreclosed by  
9 a creditor, lienholder or lessor, provided that a final judgment  
10 against the franchisee remains unsatisfied for 30 days (unless a  
11 supersedeas or other appeal bond has been filed); or a levy of  
12 execution has been made upon the license granted by the franchise  
13 agreement or upon any property used in the franchised business,  
14 and it is not discharged within five days of such levy;

15 (i) The franchisee is convicted of a felony or any other criminal  
16 misconduct which is relevant to the operation of the franchise;

17 (j) The franchisee fails to pay any franchise fees or other  
18 amounts due to the franchisor or its affiliate within five days after  
19 receiving written notice that such fees are overdue; or

20 (k) The franchisor makes a reasonable determination that  
21 continued operation of the franchise by the franchisee will result  
22 in an imminent danger to public health or safety.

23 SEC. 8. Section 22903 of the Business and Professions Code  
24 is amended to read:

25 22903. (a) This section shall only apply to a dealer contract  
26 between a dealer who is not a single-line dealer and a supplier who  
27 is not a single-line supplier.

28 (b) Except where there are grounds for termination of a dealer  
29 contract pursuant to paragraph (1), (2), (3), (4), (5), (6), (7), or (8)  
30 of subdivision (c), a supplier shall give a dealer 180 days written  
31 notice of the supplier's intent to terminate a dealer contract. The  
32 notice shall include all reasons constituting good cause for the  
33 termination and shall provide the dealer with 60 days to cure any  
34 claimed deficiency. If the deficiency is cured within 60 days to  
35 the satisfaction of the supplier, which shall be determined in good  
36 faith, the notice of termination shall be void. Except as provided  
37 in subdivision (d), a supplier may not terminate a dealer contract  
38 based on paragraph (12) of subdivision (c) unless the supplier gives  
39 the dealer notice of that action at least one year before the effective  
40 date of that action. If the dealer achieves the supplier's

1 requirements for reasonable standards or performance objectives  
2 before the expiration of the one-year notice period, the notice shall  
3 be void and the dealer contract shall continue in full force and  
4 effect.

5 (c) No supplier, directly or through an officer, agent, or  
6 employee, may terminate, cancel, fail to renew, or materially  
7 change the competitive circumstances of a dealer contract without  
8 good cause. In addition to the definition in subdivision (l) of  
9 Section 22901, good cause exists whenever the dealer has taken  
10 any of the following actions:

11 (1) Transferred a controlling ownership interest in the dealership  
12 without the consent of the supplier, who shall not withhold consent  
13 unreasonably.

14 (2) Made a material misrepresentation or falsification of any  
15 record.

16 (3) Filed a voluntary petition in bankruptcy or has had an  
17 involuntary petition in bankruptcy filed against the dealer that has  
18 not been dismissed within 60 days after the filing or is insolvent  
19 or in receivership.

20 (4) Pleaded guilty to or has been convicted of a felony involving  
21 an act of moral turpitude.

22 (5) Failed to operate in the normal course of business for seven  
23 consecutive business days, without the consent of the supplier, or  
24 has terminated the business.

25 (6) Relocated or established a new or additional dealer's place  
26 of business without the supplier's consent.

27 (7) Materially defaulted under any chattel mortgage or other  
28 security agreement between the dealer and the supplier, or there  
29 has been a revocation of any guarantee of the dealer's present or  
30 future obligations to the supplier. However, good cause does not  
31 exist if a person revokes any guarantee in connection with or  
32 following the transfer of that person's entire ownership interest in  
33 the dealer unless the supplier requires that person to execute a new  
34 guarantee of the dealer's present or future obligations in connection  
35 with that transfer of ownership interest.

36 (8) Failed to satisfy any payment obligation as it became due  
37 and payable to the supplier, failed to promptly account to the  
38 supplier for any proceeds from the sale of equipment, or failed to  
39 hold those proceeds in trust for the benefit of the supplier.

1 (9) Engaged in conduct that is injurious or detrimental to any  
2 of the following:

3 (A) The dealer's customers. This includes, but is not limited to,  
4 the following conduct: excessive pricing, misleading advertising,  
5 failure to provide service and replacement parts, and failure to  
6 perform warranty obligations.

7 (B) The public welfare.

8 (C) The representation or reputation of the supplier's product.

9 (10) Consistently failed to meet building and housekeeping  
10 requirements, or failed to provide adequate sales, service, or parts  
11 personnel commensurate with the dealer contract.

12 (11) Consistently failed to comply with the applicable licensing  
13 laws pertaining to the products and services being represented for  
14 and on the supplier's behalf.

15 (12) Consistently failed to meet and maintain the supplier's  
16 requirements for reasonable standards and performance objectives,  
17 if the supplier has given the dealer reasonable standards and  
18 performance objectives that are based on the manufacturer's  
19 experience in other comparable market areas.

20 (d) Notwithstanding subdivision (c), if the sales, service, rental,  
21 and repair of a supplier's product represents the lesser of 10 percent  
22 or three hundred fifty thousand dollars (\$350,000) of the dealer's  
23 total gross annual revenue that includes, but is not limited to, the  
24 sales, service, rental, or repair, for each dealer location, the supplier  
25 may terminate a dealer contract based on paragraph (12) of  
26 subdivision (c) upon providing the dealer with notice of that action  
27 at least 180 days before the effective date of that action. If the  
28 dealer achieves the supplier's requirements for reasonable standards  
29 or performance objectives within 60 days of receipt of the  
30 termination notice, the notice shall be void and the dealer contract  
31 shall continue in full force and effect.

32 (e) Notwithstanding a dealer contract that provides for  
33 exclusivity during the term of the contract, a supplier may begin  
34 contract negotiations with a potential replacement dealer 60 days  
35 prior to the expiration of the notice period that has been provided  
36 pursuant to subdivisions (b) or (d) if the dealer failed to achieve  
37 the supplier's requirements for reasonable standards or performance  
38 objectives within 60 days of receipt of the termination notice.  
39 Nothing in this subdivision shall authorize a replacement dealer

1 to conduct operations with a supplier during the term of a dealer  
2 contract.

3 SEC. 9. Section 24071 of the Business and Professions Code  
4 is amended to read:

5 24071. The license of one spouse may be transferred to the  
6 other spouse when the application for transfer is made prior to the  
7 entry of a final decree of divorce, and the license of a decedent,  
8 minor ward, incompetent person, conservatee, debtor in a  
9 bankruptcy case, person for whose estate a receiver is appointed,  
10 or assignor for the benefit of creditors may be transferred by or to  
11 the surviving partners of a deceased licensee, the executor,  
12 administrator, conservator or guardian of an estate of a licensee,  
13 the surviving spouse of a deceased licensee in the event that the  
14 deceased licensee leaves no estate to be administered, the trustee  
15 of a bankrupt estate of a licensee, a receiver of the estate of a  
16 licensee, or an assignee for the benefit of creditors of a licensee  
17 with the consent of the assignor, or a license may be transferred  
18 by or to a receiver appointed for a judgment debtor as provided  
19 by Section 708.630 of the Code of Civil Procedure, or a license  
20 may be transferred to a revocable living trust when the licensee is  
21 also the trustee, or a license may be transferred between partners  
22 where no new partner is being licensed, or a license may be  
23 transferred between corporations whose outstanding shares of  
24 stock are owned by the same natural persons, or a licensee may  
25 transfer upon compliance with Section 24073 any license to a  
26 corporation whose entire stock is owned by the licensee, or his or  
27 her spouse, or a licensee may transfer upon compliance with  
28 Section 24073 any license to a limited liability company whose  
29 entire membership consists of the licensee, or his or her spouse,  
30 or a license may be transferred from a corporation to a person who  
31 owns, or whose spouse owns, the entire stock of the corporation,  
32 and the fee for transfer of each license is fifty dollars (\$50). The  
33 regular transfer fee provided in Section 24072 shall be due and  
34 payable upon the subsequent transfer of 25 percent of the stock in  
35 a corporation to which a license has been transferred by a licensee  
36 or his or her spouse pursuant to this section, except if the transfer  
37 of stock is from a parent to his or her child or grandchild, in which  
38 case the fee shall be one-half of the regular transfer fee. In no case  
39 shall a fee be charged for the transfer of an importer's license. All  
40 money collected from the fees provided for in this section shall be



1 deposited in the Alcohol Beverage Control Fund as provided in  
2 Section 25761.

3 Nothing in this section shall be deemed to authorize the  
4 formation of a limited liability company composed of only one  
5 member in violation of subdivision (b) of Section 17050 of the  
6 Corporations Code.

7 SEC. 10. Section 1785.13 of the Civil Code is amended to  
8 read:

9 1785.13. (a) No consumer credit reporting agency shall make  
10 any consumer credit report containing any of the following items  
11 of information:

12 (1) Bankruptcies that, from the date of the order for relief,  
13 antedate the report by more than 10 years.

14 (2) Suits and judgments that, from the date of entry or renewal,  
15 antedate the report by more than seven years or until the governing  
16 statute of limitations has expired, whichever is the longer period.

17 (3) Unlawful detainer actions, unless the lessor was the  
18 prevailing party. For purposes of this paragraph, the lessor shall  
19 be deemed to be the prevailing party only if (A) final judgment  
20 was awarded to the lessor (i) upon entry of the tenant's default,  
21 (ii) upon the granting of the lessor's motion for summary judgment,  
22 or (iii) following trial, or (B) the action was resolved by a written  
23 settlement agreement between the parties that states that the  
24 unlawful detainer action may be reported. In any other instance in  
25 which the action is resolved by settlement agreement, the lessor  
26 shall not be deemed to be the prevailing party for purposes of this  
27 paragraph.

28 (4) Paid tax liens that, from the date of payment, antedate the  
29 report by more than seven years.

30 (5) Accounts placed for collection or charged to profit and loss  
31 that antedate the report by more than seven years.

32 (6) Records of arrest, indictment, information, misdemeanor  
33 complaint, or conviction of a crime that, from the date of  
34 disposition, release, or parole, antedate the report by more than  
35 seven years. These items of information shall no longer be reported  
36 if at any time it is learned that in the case of a conviction a full  
37 pardon has been granted, or in the case of an arrest, indictment,  
38 information, or misdemeanor complaint a conviction did not result.

39 (7) Any other adverse information that antedates the report by  
40 more than seven years.

(b) The seven-year period specified in paragraphs (5) and (7) of subdivision (a) shall commence to run, with respect to any account that is placed for collection (internally or by referral to a third party, whichever is earlier), charged to profit and loss, or subjected to any similar action, upon the expiration of the 180-day period beginning on the date of the commencement of the delinquency that immediately preceded the collection activity, charge to profit and loss, or similar action. Where more than one of these actions is taken with respect to a particular account, the seven-year period specified in paragraphs (5) and (7) shall commence concurrently for all these actions on the date of the first of these actions.

(c) Any consumer credit reporting agency that furnishes a consumer credit report containing information regarding any case involving a consumer arising under the bankruptcy provisions of Title 11 of the United States Code shall include an identification of the chapter of Title 11 of the United States Code under which the case arose if that can be ascertained from what was provided to the consumer credit reporting agency by the source of the information.

(d) A consumer credit report shall not include any adverse information concerning a consumer antedating the report by more than 10 years or that otherwise is prohibited from being included in a consumer credit report.

(e) If a consumer credit reporting agency is notified by a furnisher of credit information that an open-end credit account of the consumer has been closed by the consumer, any consumer credit report thereafter issued by the consumer credit reporting agency with respect to that consumer, and that includes information respecting that account, shall indicate the fact that the consumer has closed the account. For purposes of this subdivision, "open-end credit account" does not include any demand deposit account, such as a checking account, money market account, or share draft account.

(f) Consumer credit reporting agencies shall not include medical information in their files on consumers or furnish medical information for employment, insurance, or credit purposes in a consumer credit report without the consent of the consumer.

(g) A consumer credit reporting agency shall include in any consumer credit report information, if any, on the failure of the

1 consumer to pay overdue child or spousal support, where the  
2 information either was provided to the consumer credit reporting  
3 agency pursuant to Section 4752 or has been provided to the  
4 consumer credit reporting agency and verified by another federal,  
5 state, or local governmental agency.

6 SEC. 11. Section 1786.18 of the Civil Code is amended to  
7 read:

8 1786.18. (a) Except as authorized under subdivision (b), an  
9 investigative consumer reporting agency may not make or furnish  
10 any investigative consumer report containing any of the following  
11 items of information:

12 (1) Bankruptcies that, from the date of the order for relief,  
13 antedate the report by more than 10 years.

14 (2) Suits that, from the date of filing, and satisfied judgments  
15 that, from the date of entry, antedate the report by more than seven  
16 years.

17 (3) Unsatisfied judgments that, from the date of entry, antedate  
18 the report by more than seven years.

19 (4) Unlawful detainer actions where the defendant was the  
20 prevailing party or where the action is resolved by settlement  
21 agreement.

22 (5) Paid tax liens that, from the date of payment, antedate the  
23 report by more than seven years.

24 (6) Accounts placed for collection or charged to profit and loss  
25 that antedate the report by more than seven years.

26 (7) Records of arrest, indictment, information, misdemeanor  
27 complaint, or conviction of a crime that, from the date of  
28 disposition, release, or parole, antedate the report by more than  
29 seven years. These items of information shall no longer be reported  
30 if at any time it is learned that, in the case of a conviction, a full  
31 pardon has been granted or, in the case of an arrest, indictment,  
32 information, or misdemeanor complaint, a conviction did not result;  
33 except that records of arrest, indictment, information, or  
34 misdemeanor complaints may be reported pending pronouncement  
35 of judgment on the particular subject matter of those records.

36 (8) Any other adverse information that antedates the report by  
37 more than seven years.

38 (b) The provisions of subdivision (a) are not applicable in either  
39 of the following circumstances:

1 (1) If the investigative consumer report is to be used in the  
2 underwriting of life insurance involving, or that may reasonably  
3 be expected to involve, an amount of two hundred fifty thousand  
4 dollars (\$250,000) or more.

5 (2) If the investigative consumer report is to be used by an  
6 employer who is explicitly required by a governmental regulatory  
7 agency to check for records that are prohibited by subdivision (a)  
8 when the employer is reviewing a consumer's qualification for  
9 employment.

10 (c) Except as otherwise provided in Section 1786.28, an  
11 investigative consumer reporting agency shall not furnish an  
12 investigative consumer report that includes information that is a  
13 matter of public record and that relates to an arrest, indictment,  
14 conviction, civil judicial action, tax lien, or outstanding judgment,  
15 unless the agency has verified the accuracy of the information  
16 during the 30-day period ending on the date on which the report  
17 is furnished.

18 (d) An investigative consumer reporting agency shall not prepare  
19 or furnish an investigative consumer report on a consumer that  
20 contains information that is adverse to the interest of the consumer  
21 and that is obtained through a personal interview with a neighbor,  
22 friend, or associate of the consumer or with another person with  
23 whom the consumer is acquainted or who has knowledge of the  
24 item of information, unless either (1) the investigative consumer  
25 reporting agency has followed reasonable procedures to obtain  
26 confirmation of the information, from an additional source that  
27 has independent and direct knowledge of the information, or (2)  
28 the person interviewed is the best possible source of the  
29 information.

30 SEC. 12. Section 1788.14 of the Civil Code is amended to  
31 read:

32 1788.14. No debt collector shall collect or attempt to collect a  
33 consumer debt by means of the following practices:

34 (a) Obtaining an affirmation from a debtor of a consumer debt  
35 which has been discharged in bankruptcy, without clearly and  
36 conspicuously disclosing to the debtor, in writing, at the time such  
37 affirmation is sought, the fact that the debtor is not legally obligated  
38 to make such affirmation;

39 (b) Collecting or attempting to collect from the debtor the whole  
40 or any part of the debt collector's fee or charge for services

1 rendered, or other expense incurred by the debt collector in the  
2 collection of the consumer debt, except as permitted by law; or

3 (c) Initiating communications, other than statements of account,  
4 with the debtor with regard to the consumer debt, when the debt  
5 collector has been previously notified in writing by the debtor's  
6 attorney that the debtor is represented by such attorney with respect  
7 to the consumer debt and such notice includes the attorney's name  
8 and address and a request by such attorney that all communications  
9 regarding the consumer debt be addressed to such attorney, unless  
10 the attorney fails to answer correspondence, return telephone calls,  
11 or discuss the obligation in question. This subdivision shall not  
12 apply where prior approval has been obtained from the debtor's  
13 attorney, or where the communication is a response in the ordinary  
14 course of business to a debtor's inquiry.

15 SEC. 13. Section 1812.206 of the Civil Code is amended to  
16 read:

17 1812.206. At least 48 hours prior to the execution of a seller  
18 assisted marketing plan contract or agreement or at least 48 hours  
19 prior to the receipt of any consideration, whichever occurs first,  
20 the seller or his or her representative shall provide to the  
21 prospective purchaser in writing a document entitled "SELLER  
22 ASSISTED MARKETING PLAN INFORMATION SHEET."  
23 The seller may combine the information required under this section  
24 with the information required under Section 1812.205 and, if done,  
25 shall utilize the single title "DISCLOSURES REQUIRED BY  
26 CALIFORNIA LAW," and the title page required by Section  
27 1812.205. If a combined document is used, it shall be given at the  
28 time required by Section 1812.205, provided that this time meets  
29 the 48-hour test of this section. The information sheet required by  
30 this section shall contain the following:

31 (a) The name of and the office held by the seller's owners,  
32 officers, directors, trustees and general or limited partners, as the  
33 case may be, and the names of those individuals who have  
34 management responsibilities in connection with the seller's  
35 business activities.

36 (b) A statement whether the seller, any person identified in  
37 subdivision (a), and any other company managed by a person  
38 identified in subdivision (a):

39 (1) Has been convicted of a felony or misdemeanor or pleaded  
40 nolo contendere to a felony or misdemeanor charge if the felony

1 or misdemeanor involved an alleged violation of this title, fraud,  
2 embezzlement, fraudulent conversion or misappropriation of  
3 property.

4 (2) Has been held liable in a civil action by final judgment or  
5 consented to the entry of a stipulated judgment if the civil action  
6 alleged a violation of this title, fraud, embezzlement, fraudulent  
7 conversion or misappropriation of property or the use of untrue or  
8 misleading representations in an attempt to sell or dispose of real  
9 or personal property or the use of unfair, unlawful or deceptive  
10 business practices.

11 (3) Is subject to any currently effective agreement, injunction,  
12 or restrictive order, including, but not limited to, a “cease and  
13 desist” order, an “assurance of discontinuance,” or other  
14 comparable agreement or order, relating to business activity as the  
15 result of an action or investigation brought by a public agency or  
16 department, including, but not limited to, an action affecting any  
17 vocational license.

18 The statements required by paragraphs (1), (2) and (3) of this  
19 subdivision shall set forth the terms of the agreement, or the court,  
20 the docket number of the matter, the date of the conviction or of  
21 the judgment and, when involved, the name of the governmental  
22 agency that initiated the investigation or brought the action  
23 resulting in the conviction or judgment.

24 (4) Has at any time during the previous seven fiscal years been  
25 the subject of an order for relief in bankruptcy, been reorganized  
26 due to insolvency, or been a principal, director, officer, trustee,  
27 general or limited partner, or had management responsibilities of  
28 any other person, as defined in subdivision (b) of Section 1812.201,  
29 that has so filed or was so reorganized, during or within one year  
30 after the period that the individual held that position. If so, the  
31 name and location of the person having so filed, or having been  
32 so reorganized, the date thereof, the court which exercised  
33 jurisdiction, and the docket number of the matter shall be set forth.

34 (c) The length of time the seller:

35 (1) Has sold seller assisted marketing plans.

36 (2) Has sold the specific seller assisted marketing plan being  
37 offered to the purchaser.

38 (d) If the seller is required to secure a bond or establish a trust  
39 account pursuant to the requirements of Section 1812.204, the  
40 information sheet shall state either:

1 (1) “Seller has secured a bond issued by

2  
3 \_\_\_\_\_,  
4 (name and address of surety company)  
5

6 a surety company admitted to do business in this state. Before  
7 signing a contract to purchase this seller assisted marketing plan,  
8 you should check with the surety company to determine the bond’s  
9 current status,” or

10 (2) “Seller has deposited with the office of the Attorney General  
11 information regarding its trust account. Before signing a contract  
12 to purchase this seller assisted marketing plan, you should check  
13 with the Attorney General to determine the current status of the  
14 trust account.”

15 (e) A copy of a recent, not more than 12 months old, financial  
16 statement of the seller, together with a statement of any material  
17 changes in the financial condition of the seller from the date  
18 thereof. That financial statement shall either be audited or be under  
19 penalty of perjury signed by one of the seller’s officers, directors,  
20 trustees or general or limited partners. The declaration under  
21 penalty of perjury shall indicate that to the best of the signatory’s  
22 knowledge and belief the information in the financial statement is  
23 true and accurate; the date of signature and the location where  
24 signed shall also be indicated. Provided, however, that where a  
25 seller is a subsidiary of another corporation which is permitted by  
26 generally accepted accounting standards to prepare financial  
27 statements on a consolidated basis, the above information may be  
28 submitted in the same manner for the parent if the corresponding  
29 financial statement of the seller is also provided and the parent  
30 absolutely and irrevocably has agreed to guarantee all obligations  
31 of the seller.

32 (f) An unexecuted copy of the entire seller assisted marketing  
33 plan contract.

34 (g) For purposes of this section, “seller’s owners” means any  
35 individual who holds an equity interest of at least 10 percent in  
36 the seller.

37 SEC. 14. Section 703.130 of the Code of Civil Procedure is  
38 amended to read:

39 703.130. Pursuant to the authority of paragraph (2) of  
40 subsection (b) of Section 522 of Title 11 of the United States Code,

1 the exemptions set forth in subsection (d) of Section 522 of Title  
2 11 of the United States Code (Bankruptcy) are not authorized in  
3 this state.

4 SEC. 15. Section 1400 of the Corporations Code is amended  
5 to read:

6 1400. (a) Any domestic corporation with respect to which a  
7 proceeding has been initiated under any applicable statute of the  
8 United States, as now existing or hereafter enacted, relating to  
9 reorganizations of corporations, has full power and authority to  
10 put into effect and carry out any plan of reorganization and the  
11 orders of the court or judge entered in such proceeding and may  
12 take any proceeding and do any act provided in the plan or directed  
13 by such orders, without further action by its board or shareholders.  
14 Such power and authority may be exercised and such proceedings  
15 and acts may be taken, as may be directed by such orders, by the  
16 trustee or trustees of such corporation appointed in the  
17 reorganization proceeding (or a majority thereof), or if none is  
18 appointed and acting, by officers of the corporation designated or  
19 a master or other representative appointed by the court or judge,  
20 with like effect as if exercised and taken by unanimous action of  
21 the board and shareholders of the corporation.

22 (b) Such corporation may, in the manner provided in subdivision  
23 (a), but without limiting the generality or effect of subdivision (a),  
24 alter, amend or repeal its bylaws; constitute or reconstitute its board  
25 and name, constitute or appoint directors and officers in place of  
26 or in addition to all or some of the directors or officers then in  
27 office; amend its articles; make any change in its capital stock;  
28 make any other amendment, change, alteration or provision  
29 authorized by this division; be dissolved, transfer all or part of its  
30 assets or merge as permitted by this division, in which case,  
31 however, no shareholder shall have any statutory dissenter's rights;  
32 change the location of its principal executive office or remove or  
33 appoint an agent to receive service of process; authorize and fix  
34 the terms, manner and conditions of the issuance of bonds,  
35 debentures or other obligations, whether or not convertible into  
36 shares of any class or bearing warrants or rights to purchase or  
37 subscribe to shares of any class; or lease its property and franchises  
38 to any corporation, if permitted by law.

39 SEC. 16. Section 1401 of the Corporations Code is amended  
40 to read:



1 1401. (a) A certificate of any amendment, change or alteration  
2 or of dissolution or any agreement of merger made by such  
3 corporation pursuant to Section 1400 and executed as provided in  
4 subdivision (b), shall be filed and shall thereupon become effective  
5 in accordance with its terms and the provisions of this chapter.

6 (b) Such certificate, agreement of merger or other instrument  
7 shall be signed and verified, as may be directed by such orders of  
8 the court or judge, by the trustee or trustees appointed in the  
9 reorganization proceeding (or a majority thereof) or, if none is  
10 appointed and acting, by officers of the corporation designated or  
11 by a master or other representative appointed by the court or judge,  
12 and shall state that provision for the making of such certificate,  
13 agreement or instrument is contained in an order, identifying the  
14 same, of a court or judge having jurisdiction of a proceeding under  
15 a statute of the United States for the reorganization of such  
16 corporation.

17 SEC. 17. Section 1402 of the Corporations Code is amended  
18 to read:

19 1402. The provisions of this chapter shall cease to apply to a  
20 corporation upon the entry of a final decree in the reorganization  
21 proceeding closing the case and discharging the trustee or trustees,  
22 if any, whether or not jurisdiction may be retained thereafter by  
23 the court for limited purposes which do not relate to the  
24 consummation of the plan.

25 SEC. 18. Section 1403 of the Corporations Code is amended  
26 to read:

27 1403. For filing any certificate, agreement or other paper  
28 pursuant to this chapter there shall be paid to the Secretary of State  
29 the same fees as are payable by corporations not in reorganization  
30 proceedings upon the filing of like certificates, agreements or other  
31 papers.

32 SEC. 19. Section 6110 of the Corporations Code is amended  
33 to read:

34 6110. Any proceeding, initiated with respect to a corporation,  
35 under any applicable statute of the United States, as now existing  
36 or hereafter enacted, relating to reorganizations of corporations,  
37 shall be governed by the provisions of Chapter 14 (commencing  
38 with Section 1400) of Division 1 of Title 1, and for this purpose  
39 the reference in Chapter 14 to “shareholders” shall be deemed to

1 be a reference to members and the reference to “this division” shall  
2 be deemed to be a reference to this part.

3 SEC. 20. Section 6610 of the Corporations Code is amended  
4 to read:

5 6610. (a) Any corporation may elect voluntarily to wind up  
6 and dissolve (1) by approval of a majority of all members (Section  
7 5033) or (2) by approval of the board and approval of the members  
8 (Section 5034).

9 (b) Any corporation which comes within one of the following  
10 descriptions may elect by approval of the board to wind up and  
11 dissolve:

12 (1) A corporation which has been the subject of an order for  
13 relief in bankruptcy.

14 (2) A corporation which has disposed of all of its assets and has  
15 not conducted any activity for a period of five years immediately  
16 preceding the adoption of the resolution electing to dissolve the  
17 corporation.

18 (3) A corporation which has no members.

19 (4) A corporation which is required to dissolve under provisions  
20 of its articles adopted pursuant to subdivision (a), paragraph (2),  
21 clause (i), of Section 5132.

22 SEC. 21. Section 8110 of the Corporations Code is amended  
23 to read:

24 8110. Any proceeding, initiated with respect to a corporation,  
25 under any applicable statute of the United States, as now existing  
26 or hereafter enacted, relating to reorganizations of corporations,  
27 shall be governed by the provisions of Chapter 14 (commencing  
28 with Section 1400) of Division 1 of Title 1, and for this purpose  
29 the reference in Chapter 14 to “shareholders” shall be deemed to  
30 be a reference to members and the reference to “this division” shall  
31 be deemed to be a reference to this part.

32 SEC. 22. Section 8610 of the Corporations Code is amended  
33 to read:

34 8610. (a) Any corporation may elect voluntarily to wind up  
35 and dissolve (1) by approval of a majority of all members (Section  
36 5033), or (2) by approval of the board and approval of the  
37 members (Section 5034).

38 (b) Any corporation which comes within one of the following  
39 descriptions may elect by approval of the board to wind up and  
40 dissolve:

1 (1) A corporation which has been the subject of an order for  
2 relief in bankruptcy.

3 (2) A corporation which has disposed of all of its assets and has  
4 not conducted any activity for a period of five years immediately  
5 preceding the adoption of the resolution electing to dissolve the  
6 corporation.

7 (3) A corporation which has no members.

8 (4) A corporation which is required to dissolve under provisions  
9 of its articles adopted pursuant to subdivision (a), paragraph (4),  
10 clause (i) of Section 7132.

11 SEC. 23. Section 9650 of the Corporations Code is amended  
12 to read:

13 9650. Any proceeding, initiated with respect to a corporation,  
14 under any applicable statute of the United States, as now existing  
15 or hereafter enacted, relating to reorganizations of corporations,  
16 shall be governed by the provisions of Chapter 14 (commencing  
17 with Section 1400) of Division 1 of Title 1, and for this purpose  
18 the reference in Chapter 14 to “shareholders” shall be deemed to  
19 be a reference to members and the reference to “this division” shall  
20 be deemed to be a reference to this part.

21 SEC. 24. Section 9680 of the Corporations Code is amended  
22 to read:

23 9680. (a) Chapters 16 (commencing with Section 6610) and  
24 17 (commencing with Section 6710) of Part 2 apply to religious  
25 corporations except for Sections 6610, 6614, 6710, 6711 and 6716.

26 (b) (1) Any corporation may elect voluntarily to wind up and  
27 dissolve (A) by approval of a majority of all the members (Section  
28 5033) or (B) by approval of the board and approval of the members  
29 (Section 5034).

30 (2) Any corporation which comes within one of the following  
31 descriptions may elect by approval of the board to wind up and  
32 dissolve:

33 (A) A corporation which has been the subject of an order for  
34 relief in bankruptcy.

35 (B) A corporation which has disposed of all its assets and has  
36 not conducted any activity for a period of five years immediately  
37 preceding the adoption of the resolution electing to dissolve the  
38 corporation.

39 (C) A corporation which has no members.

1 (D) A corporation which is required to dissolve under provisions  
2 of its articles adopted pursuant to subparagraph (i) of paragraph  
3 (2) of subdivision (a) of Section 9132.

4 (c) If a corporation is in the process of voluntary winding up,  
5 the superior court of the proper county, upon the petition of (1)  
6 the corporation, or (2) the authorized number (Section 5036), or  
7 (3) the Attorney General, or (4) three or more creditors, and upon  
8 such notice to the corporation and members and creditors as the  
9 court may order, may take jurisdiction over the voluntary winding  
10 up proceeding if that appears necessary for the protection of the  
11 assets of the corporation. The court, if it assumes jurisdiction, may  
12 make such orders as to any and all matters concerning the winding  
13 up of the affairs of the corporation and the protection of its creditors  
14 and its assets as justice and equity may require. Chapter 15  
15 (commencing with Section 6510) (except Sections 6510 and 6511)  
16 shall apply to those court proceedings.

17 (d) The powers and duties of the directors (or other persons  
18 appointed by the court pursuant to Section 6515) and officers after  
19 commencement of a dissolution proceeding include, but are not  
20 limited to, the following acts in the name and on behalf of the  
21 corporation:

22 (1) To elect officers and to employ agents and attorneys to  
23 liquidate or wind up its affairs.

24 (2) To continue the conduct of the affairs of the corporation  
25 insofar as necessary for the disposal or winding up thereof.

26 (3) To carry out contracts and collect, pay, compromise, and  
27 settle debts and claims for or against the corporation.

28 (4) To defend suits brought against the corporation.

29 (5) To sue, in the name of the corporation, for all sums due or  
30 owing to the corporation or to recover any of its property.

31 (6) To collect any amounts remaining unpaid on memberships  
32 or to recover unlawful distributions.

33 (7) Subject to the provisions of Section 9142, to sell at public  
34 or private sale, exchange, convey, or otherwise dispose of all or  
35 any part of the assets of the corporation in an amount deemed  
36 reasonable by the board without compliance with Section 9631,  
37 and to execute bills of sale and deeds of conveyance in the name  
38 of the corporation.

39 (8) In general, to make contracts and to do any and all things  
40 in the name of the corporation which may be proper or convenient

1 for the purposes of winding up, settling and liquidating the affairs  
2 of the corporation.

3 (e) After complying with Section 6713:

4 (1) Except as provided in Section 6715, all of a corporation's  
5 assets shall be disposed of on dissolution in conformity with its  
6 articles or bylaws subject to complying with the provisions of any  
7 trust under which such assets are held.

8 (2) Except as provided in subdivision (3), the disposition  
9 required in subdivision (1) shall be made by decree of the superior  
10 court of the proper county. The decree shall be made upon petition  
11 therefor, upon 30 days' notice to the Attorney General, by any  
12 person concerned in the dissolution.

13 (3) The disposition required in subdivision (1) may be made  
14 without the decree of the superior court, subject to the rights of  
15 persons concerned in the dissolution, if the Attorney General makes  
16 a written waiver of objections to the disposition.

17 (f) A vacancy on the board may be filled during a winding up  
18 proceeding in the manner provided in Section 9224.

19 (g) Chapter 15 (commencing with Section 6510) does not apply  
20 to religious corporations except to the extent its provisions apply  
21 under subdivision (d) of Section 6617, subdivision (c) of Section  
22 6719, or subdivision (c) or (d) of this section.

23 SEC. 25. Section 12560 of the Corporations Code is amended  
24 to read:

25 12560. Any proceeding, initiated with respect to a corporation,  
26 under any applicable statute of the United States, as now existing  
27 or hereafter enacted, relating to reorganizations of corporations,  
28 shall be governed by the provisions of Chapter 14 (commencing  
29 with Section 1400) of Division 1 of Title 1, and for this purpose  
30 the reference in Chapter 14 to "shareholders" shall be deemed to  
31 be a reference to members and the reference to "this division" shall  
32 be deemed to be a reference to this part.

33 SEC. 26. Section 12630 of the Corporations Code is amended  
34 to read:

35 12630. (a) Any corporation may elect voluntarily to wind up  
36 and dissolve (1) by approval of a majority of all members (Section  
37 12223) or (2) by approval of the board and approval of the  
38 members (Section 12224).

(b) Any corporation which comes within one of the following descriptions may elect by approval of the board to wind up and dissolve:

(1) A corporation which has been the subject of an order for relief in bankruptcy.

(2) A corporation which has disposed of all of its assets and has not conducted any activity for a period of five years immediately preceding the adoption of the resolution electing to dissolve the corporation.

(3) A corporation which has no members.

SEC. 27. Section 15642 of the Corporations Code is amended to read:

15642. A person ceases to be a general partner of a limited partnership upon the happening of any of the following events:

(a) The general partner withdraws from the limited partnership as provided in Section 15662.

(b) The general partner is removed as a general partner.

(c) Unless otherwise provided in the partnership agreement, an order for relief against the general partner is entered under Chapter 7 of the federal bankruptcy law, or the general partner: (1) makes a general assignment for the benefit of creditors, (2) files a voluntary petition under the federal bankruptcy law, (3) files a petition or answer seeking for that partner any reorganization, composition, readjustment, liquidation, dissolution or similar relief under any statute, law, or regulation, (4) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against that partner in any proceeding of this nature, or (5) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of that partner's properties.

(d) Unless otherwise provided in the partnership agreement, 60 days after the commencement of any proceeding against the general partner seeking reorganization, composition, readjustment, liquidation, dissolution or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within 60 days after the appointment without that partner's consent or acquiescence of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of that partner's properties, the appointment is not vacated or stayed, or within 60 days after the expiration of any such stay, the appointment is not vacated.

1 (e) In the case of a general partner who is an individual, either  
2 of the following:

3 (1) The death of that partner.

4 (2) The entry by a court of competent jurisdiction of an order  
5 adjudicating the partner incompetent to manage the general  
6 partner's estate.

7 (f) Unless otherwise provided in the partnership agreement, in  
8 the case of a general partner who is acting as a general partner by  
9 virtue of being a trustee of a trust, the termination of the trust (but  
10 not merely the substitution of a new trustee, in which case the new  
11 trustee automatically becomes the new general partner).

12 (g) Unless otherwise provided in the partnership agreement, in  
13 the case of a general partner that is a separate partnership, the  
14 dissolution of the separate partnership.

15 (h) In the case of a general partner that is a corporation, the  
16 filing of a certificate of dissolution, or its equivalent, for the  
17 corporation.

18 (i) In the case of a general partner that is an estate, the  
19 distribution by the fiduciary of the estate's entire interest in the  
20 limited partnership.

21 (j) In the case of a general partner that is a limited liability  
22 company, the filing of a certificate of dissolution or its equivalent  
23 for the limited liability company.

24 Notwithstanding the provisions of this section, a person who  
25 ceases to be a general partner of a limited partnership, shall be  
26 deemed to be acting as a general partner with respect to a third  
27 party doing business with the limited partnership, until an amended  
28 certificate of limited partnership is filed in accordance with Section  
29 15622.

30 SEC. 28. Section 23005 of the Corporations Code is amended  
31 to read:

32 23005. The provisions of Sections 1400 and 1402 governing  
33 bankruptcy reorganizations for corporations also apply to real  
34 estate investment trusts. For that purpose where the term  
35 "corporation" is used in such sections it shall also include the term  
36 "real estate investment trust", the terms "director" or "board of  
37 directors" shall include "trustee" or "board of trustees", the term  
38 "articles" shall include "declaration of trust" and the term "capital  
39 stock" shall include "shares of beneficial interest."

1 SEC. 29. Section 25103 of the Corporations Code is amended  
2 to read:

3 25103. The following transactions are exempted from the  
4 provisions of Section 25110 and Section 25120:

5 (a) Any negotiations or agreements prior to general solicitation  
6 of approval by the holders of equity securities, and subject to that  
7 approval, of (1) a change in the rights, preferences, privileges, or  
8 restrictions of or on outstanding securities, (2) a merger,  
9 consolidation, or sale of assets in consideration of the issuance of  
10 securities, or (3) an entity conversion transaction.

11 (b) Any change in the rights, preferences, privileges, or  
12 restrictions of or on outstanding securities or any entity conversion  
13 transaction, unless the holders of at least 25 percent of the  
14 outstanding shares or units of any class of securities that will be  
15 directly or indirectly affected substantially and adversely by that  
16 change or transaction have addresses in this state according to the  
17 records of the issuer.

18 (c) Any exchange incident to a merger, consolidation, or sale  
19 of assets in consideration of the issuance of securities of another  
20 issuer, unless at least 25 percent of the outstanding securities of  
21 any class, any holders of which are to receive securities in the  
22 exchange, are held by persons who have addresses in this state  
23 according to the records of the issuer of which they are holders.  
24 This exemption is not available for a rollup transaction as defined  
25 by Section 25014.6. The exemption is also not available for a  
26 transaction excluded from the definition of rollup transaction by  
27 virtue of paragraph (5) or (6) of subdivision (b) of Section 25014.6  
28 if the transaction is one of a series of transactions that directly or  
29 indirectly through acquisition or otherwise involves the  
30 combination or reorganization of one or more rollup participants.

31 (d) For the purposes of subdivision (b) and subdivision (c) of  
32 this section, (1) any securities held to the knowledge of the issuer  
33 in the names of broker-dealers or nominees of broker-dealers and  
34 (2) any securities controlled by any one person who controls  
35 directly or indirectly 50 percent or more of the outstanding  
36 securities of that class shall not be considered outstanding. The  
37 determination of whether 25 percent of the outstanding securities  
38 are held by persons having addresses in this state, for the purposes  
39 of subdivision (b) and subdivision (c) of this section, shall be made  
40 as of the record date for the determination of the security holders



1 entitled to vote on or consent to the action, if approval of those  
2 holders is required, or, if not, as of the date of directors' approval  
3 of that action.

4 (e) Any change (other than a stock split or reverse stock split)  
5 in the rights, preferences, privileges, or restrictions of or on  
6 outstanding equity securities, except the following if they  
7 materially and adversely affect any class of equity securities: (1)  
8 to add, change, or delete assessment provisions; (2) to change the  
9 rights to dividends thereon; (3) to change the redemption  
10 provisions; (4) to make them redeemable; (5) to change the amount  
11 payable on liquidation; (6) to change, add, or delete conversion  
12 rights; (7) to change, add, or delete voting rights; (8) to change,  
13 add, or delete preemptive rights; (9) to change, add, or delete  
14 sinking fund provisions; (10) to rearrange the relative priorities of  
15 outstanding equity securities; (11) to impose, change, or delete  
16 restrictions upon the transfer of equity securities in the  
17 organizational documents for the entity; (12) to change the right  
18 of holders of equity securities with respect to the calling of special  
19 meetings of holders of equity securities; and (13) to change, add,  
20 or delete any rights, preferences, privileges, or restrictions of, or  
21 on, the outstanding shares or memberships of a mutual water  
22 company or other corporation or entity organized primarily to  
23 provide services or facilities to its shareholders or members.  
24 Changes in the rights, preferences, privileges, or restrictions of or  
25 on outstanding equity securities do not materially and adversely  
26 affect any class of holders of equity securities within the meaning  
27 of this subdivision if they arise from (i) the addition to articles of  
28 incorporation of the provisions described or referred to in  
29 subdivision (a) of Section 158 upon the conversion of an existing  
30 corporation to a close corporation pursuant to subdivision (b) of  
31 Section 158, (ii) the deletion from the articles of incorporation of  
32 the provisions described or referred to in subdivision (a) of Section  
33 158 upon the voluntary termination of close corporation status  
34 pursuant to subdivisions (c) and (e) of Section 158, (iii) the  
35 involuntary cessation of close corporation status pursuant to  
36 subdivision (e) of Section 158, or (iv) the termination of a  
37 shareholders' agreement pursuant to subdivision (b) of Section  
38 300.

39 (f) Any stock split or reverse stock split, except the following:  
40 (1) any stock split or reverse stock split if the corporation has more

1 than one class of shares outstanding and the split would have a  
2 material effect on the proportionate interests of the respective  
3 classes as to voting, dividends, or distributions; (2) any stock split  
4 of a stock that is traded in the market and its market price as of  
5 the date of directors' approval of the stock split adjusted to give  
6 effect to the split was less than two dollars (\$2) per share; and (3)  
7 any reverse stock split if the corporation has the option of paying  
8 cash for any fractional shares created by the reverse split and as a  
9 result of that action the proportionate interests of the shareholders  
10 would be substantially altered. Any shares issued upon a stock  
11 split or reverse stock split exempted by this subdivision shall be  
12 subject to any conditions previously imposed by the commissioner  
13 applicable to the shares with respect to which they are issued.

14 (g) Any change in the rights of outstanding debt securities,  
15 except the following if they substantially and adversely affect any  
16 class of securities: (1) to change the rights to interest thereon; (2)  
17 to change their redemption provisions; (3) to make them  
18 redeemable; (4) to extend the maturity thereof or to change the  
19 amount payable thereon at maturity; (5) to change their voting  
20 rights; (6) to change their conversion rights; (7) to change sinking  
21 fund provisions; and (8) to make them subordinate to other  
22 indebtedness.

23 (h) Any exchange incident to a merger, consolidation, or sale  
24 of assets, other than a rollup transaction (as defined in Section  
25 25014.6), in consideration of the issuance of equity securities of  
26 another entity or any entity conversion transaction that meets the  
27 following conditions:

28 (1) The exchange incident to a merger, consolidation, or sale  
29 of assets or the entity conversion transaction, had the exchange  
30 transaction involved the issuance of a security in a transaction  
31 subject to the provisions of Section 25110, would have been  
32 exempt from qualification by subdivision (f) of Section 25102,  
33 without giving effect to paragraph (3) thereof, and either of the  
34 following is applicable:

35 (A) (i) Not less than 75 percent of the outstanding equity  
36 securities of each constituent or converting entity entitled to vote  
37 on the proposed transaction voted in favor of the transaction, (ii)  
38 not more than 10 percent of the outstanding equity securities of  
39 each constituent or converting entity entitled to vote on the  
40 proposed transaction voted against the transaction, and (iii) each

1 constituent or converting entity whose security holders are entitled  
2 to vote on the proposed transaction is subject to a state statute that  
3 has provisions for dissenters' rights for holders of equity securities  
4 entitled to vote on the proposed transaction that do not vote in  
5 favor of or voted against the transaction.

6 (B) (i) The transaction is solely for the purposes of changing  
7 the issuer's state of incorporation or organization, or form of  
8 organization, (ii) all the securities of the same class or series, unless  
9 all the security holders of the class or series consent, are treated  
10 equally, and (iii) the holders of nonredeemable voting equity  
11 securities receive nonredeemable voting equity securities.

12 (2) The commissioner may, by rule, require the acquiring or  
13 surviving entity to file a notice of transaction under this section.  
14 However, the failure to file the notice or the failure to file the notice  
15 within the time specified by the rule of the commissioner shall not  
16 affect the availability of this exemption. An acquiring or surviving  
17 entity that fails to file the notice as provided by rule of the  
18 commissioner shall, within 15 business days after demand by the  
19 commissioner, file the notice and pay to the commissioner a fee  
20 equal to the fee payable had the transaction been qualified under  
21 Section 25110 or 25120.

22 (i) Any exchange of securities in connection with any merger  
23 or consolidation or sale of corporate assets in consideration wholly  
24 or in part of the issuance of securities or any entity conversion  
25 transaction under, or pursuant to, a plan of reorganization that  
26 pursuant to the provisions of the United States Bankruptcy Code  
27 (Title 11 of the United States Code) has been confirmed or is  
28 subject to confirmation by the decree or order of a court of  
29 competent jurisdiction.

30 SEC. 30. Section 25248 of the Corporations Code is amended  
31 to read:

32 25248. (a) If the commissioner finds, as a result of any  
33 examination or investigation or from any report made to the  
34 commissioner, that any person subject to this part, other than an  
35 investment adviser subject to Section 25230.1, is in an insolvent  
36 condition, or is conducting a securities, broker-dealer, or  
37 investment advisory business in such an unsafe, injurious, or  
38 unauthorized manner as to render further operations hazardous to  
39 the public or to customers, the commissioner may, by an order  
40 addressed to and served by registered or certified mail or by

1 personal service on that person and on any other person having in  
2 his or her possession or control any client funds, trust funds, or  
3 other property deposited with that person, direct discontinuance  
4 of the disbursement of client or trust funds by the parties or any  
5 of them, the receipt of client or trust funds, or other business  
6 operations. No person having in his or her possession any of these  
7 funds shall be liable for failure to comply with the order unless he  
8 or she has received written notice of the order. Subject to  
9 subdivision (b), the order shall remain in effect until set aside by  
10 the commissioner, in whole or in part, the person is the subject of  
11 an order for relief in bankruptcy, or pursuant to Section 25253,  
12 the commissioner has assumed possession of the broker-dealer or  
13 investment adviser.

14 (b) Within 15 days from the date of an order pursuant to  
15 subdivision (a), the person may request a hearing under the  
16 Administrative Procedure Act (Chapter 5 (commencing with  
17 Section 11500) of Part 1 of Division 3 of Title 2 of the Government  
18 Code). Upon receipt of a request, the matter shall be set for hearing  
19 to commence within 30 days after that receipt unless the person  
20 subject to this division consents to a later date. If no hearing is  
21 requested within 15 days after the mailing or service of the notice  
22 and none is ordered by the commissioner, the failure to request a  
23 hearing shall constitute a waiver of the right to a hearing. Neither  
24 the request for a hearing nor the hearing itself shall stay the order  
25 issued by the commissioner under subdivision (a).

26 SEC. 31. Section 28710 of the Corporations Code is amended  
27 to read:

28 28710. The commissioner may issue an order suspending or  
29 revoking the license of a licensee, if, after notice and a hearing,  
30 the commissioner finds any of the following:

31 (a) That the licensee or any controlling person or affiliate of the  
32 licensee has violated any provision of this division or of any  
33 regulation or order issued under this division or any provision of  
34 any other applicable law.

35 (b) That the licensee is conducting its business in an unsafe and  
36 unsound manner.

37 (c) That the licensee is in a condition that it is unsafe or unsound  
38 for it to transact business.

39 (d) That the licensee has ceased to transact business as a capital  
40 access company.

1 (e) That the licensee is insolvent.

2 (f) That the licensee has suspended payment of its obligations,  
3 has made an assignment for the benefit of its creditors, or has  
4 admitted in writing its inability to pay its debts as they become  
5 due.

6 (g) That the licensee is the subject of an order for relief in  
7 bankruptcy or has sought other similar relief under any other  
8 bankruptcy, reorganization, insolvency, or moratorium law, or that  
9 any person has applied for any of that relief under any of those  
10 laws against any licensee and the licensee has by any affirmative  
11 act approved of or consented to the action or the relief has been  
12 granted.

13 (h) That any fact or condition exists which, if it had existed at  
14 the time when any licensee applied for its license, would have been  
15 grounds for denying the application.

16 SEC. 32. Section 867 of the Financial Code is amended to read:

17 867. (a) Funds deposited in an account at a depository  
18 institution shall be available on the second business day after the  
19 business day on which those funds are deposited in the case of a  
20 cashier's check, certified check, teller's check, or depository check  
21 subject to the following:

22 (1) The check is endorsed only by the person to whom it was  
23 issued.

24 (2) The check is deposited in a receiving depository institution  
25 that is staffed by individuals employed by that institution.

26 (3) The check is deposited with a special deposit slip that  
27 indicates it is a cashier's check, certified check, teller's check, or  
28 depository check, as the case may be.

29 (4) The check is deposited into an account in the name of a  
30 customer that has maintained any account with the receiving  
31 depository institution for a period of 60 days or more.

32 (5) The face amount of the check is for five thousand dollars  
33 (\$5,000) or less.

34 In the case of funds deposited on any business day in an account  
35 at a depository institution by depository checks, the aggregate  
36 amount of which exceeds five thousand dollars (\$5,000), this  
37 subdivision shall apply only with respect to the first five thousand  
38 dollars (\$5,000) of the aggregate amount.

39 (b) Subdivision (a) does not apply to a depository check if the  
40 receiving depository institution reasonably believes that the check

1 is uncollectible from the originating depository institution. For  
2 purposes of this subdivision, “reasonable cause to believe” requires  
3 the existence of facts that would cause a well-grounded belief in  
4 the mind of a reasonable person. These reasons shall include, but  
5 not be limited to, a belief that (1) the drawer or drawee of the  
6 depository check has been, or will imminently be, the subject of  
7 an order for relief in bankruptcy or placed in receivership or (2)  
8 the depository check may be involved in a fraud or in a scheme  
9 commonly known as “kiting.” In these situations, the depository  
10 institution electing to proceed under this subdivision shall so notify  
11 the drawer and drawee no later than the close of the next business  
12 day following deposit of the depository check.

13 (c) For purposes of this section, the following terms have the  
14 following meanings:

15 (1) “Account” means any demand deposit account and any other  
16 similar transaction account at a depository institution.

17 (2) “Business day” means any day other than a Saturday,  
18 Sunday, or legal holiday.

19 (3) “Cashier’s check” means any check that is subject to the  
20 following:

21 (A) The check is drawn on a depository institution.

22 (B) The check is signed by an officer or employee of the  
23 depository institution.

24 (C) The check is a direct obligation of the depository institution.

25 (4) “Certified check” means any check with respect to which a  
26 depository institution certifies the following:

27 (A) That the signature on the check is genuine.

28 (B) The depository institution has set aside funds that are equal  
29 to the amount of the check and will be used only to pay that check.

30 (5) “Depository check” means any cashier’s check, certified  
31 check, teller’s check, and any other functionally equivalent  
32 instrument, as determined by the Board of Governors of the Federal  
33 Reserve System or the commissioner.

34 (6) “Depository institution” has the meaning given in clauses  
35 (i) to (vi), inclusive, of Section 19(b)(1)(A) of the Federal Reserve  
36 Act.

37 (7) “Teller’s check” means any check issued by a depository  
38 institution and drawn on another depository institution.

1 (d) Except for the specific circumstances and checks described  
2 in this section, this section is not intended to restrict or preempt  
3 the regulatory authority of the commissioner.

4 (e) In the event of a suspension or modification of any similar  
5 provisions in the federal Expedited Funds Availability Act, the  
6 effect of this section shall be similarly suspended or modified.

7 SEC. 33. Section 1203 of the Financial Code is amended to  
8 read:

9 1203. A commercial bank may hypothecate its assets in any  
10 manner provided by law to secure the deposits of moneys of the  
11 United States, of postal savings funds, of estates in bankruptcy  
12 cases, of the State of California, or of any political subdivision,  
13 public corporation, or district of the State of California. With the  
14 prior approval of the commissioner a bank may hypothecate its  
15 assets to secure moneys payable to other states.

16 SEC. 34. Section 1781 of the Financial Code is amended to  
17 read:

18 1781. If, after notice and a hearing, the commissioner finds  
19 any of the following with respect to a foreign (other nation) bank  
20 that is licensed to maintain an office, the commissioner may issue  
21 an order suspending or revoking the license of the bank:

22 (a) That the bank has violated any provision of this division or  
23 of any regulation or order issued under this division or any  
24 provision of any other applicable law, regulation, or order;

25 (b) That the bank, in case it is licensed to transact business in  
26 this state, is transacting the business in an unsafe or unsound  
27 manner or, in any case, is transacting business elsewhere in an  
28 unsafe or unsound manner;

29 (c) That the bank is in unsafe or unsound condition;

30 (d) That the bank has ceased to operate its office;

31 (e) That the bank is insolvent in that it has ceased to pay its  
32 debts in the ordinary course of business, it cannot pay its debts as  
33 they become due, or its liabilities exceed its assets;

34 (f) That the bank has suspended payment of its obligations, has  
35 made an assignment for the benefit of its creditors, or has admitted  
36 in writing its inability to pay its debts as they become due;

37 (g) That the bank is the subject of an order for relief in  
38 bankruptcy or has sought other relief under any bankruptcy,  
39 reorganization, insolvency, or moratorium law, or that any person  
40 has applied for any such relief under any such law against the bank

1 and the bank has by any affirmative act approved of or consented  
2 to the action or the relief has been granted;

3 (h) That a receiver, liquidator, or conservator has been appointed  
4 for the bank or that any proceeding for such an appointment or  
5 any similar proceeding has been initiated in the place where the  
6 bank is domiciled;

7 (i) That the existence of the bank or the authority of the bank  
8 to transact banking business under the laws of the place where the  
9 bank is domiciled has been suspended or terminated; or

10 (j) That any fact or condition exists that, if it had existed at the  
11 time when the bank applied for its license to transact business in  
12 this state, would have been grounds for denying the application.

13 SEC. 35. Section 1889 of the Financial Code is amended to  
14 read:

15 1889. If, after notice and a hearing, the commissioner finds:

16 (a) That any licensee has violated any provision of this chapter  
17 or of any regulation or order issued under this chapter or any  
18 provision of any other applicable law;

19 (b) That any licensee is conducting its business in an unsafe or  
20 unsound manner;

21 (c) That any licensee is in such condition that it is unsafe or  
22 unsound for it to transact the business of selling in this state  
23 payment instruments issued by it;

24 (d) That any licensee has ceased to transact the business of  
25 selling in this state payment instruments issued by it;

26 (e) That any licensee is insolvent;

27 (f) That any licensee has suspended payment of its obligations,  
28 has made an assignment for the benefit of its creditors, or has  
29 admitted in writing its inability to pay its debts as they become  
30 due;

31 (g) That any licensee is the subject of an order for relief in  
32 bankruptcy or has sought other relief under any bankruptcy,  
33 reorganization, insolvency, or moratorium law, or that any person  
34 has applied for any such relief under any such law against any  
35 licensee and such licensee has by any affirmative act approved of  
36 or consented to such action or such relief has been granted; or

37 (h) That any fact or condition exists which, if it had existed at  
38 the time when any licensee applied for its license, would have been  
39 grounds for denying such application:



1 The commissioner may issue an order suspending or revoking  
2 the license of such licensee.

3 SEC. 36. Section 6152 of the Financial Code is amended to  
4 read:

5 6152. (a) A director shall automatically cease to be a director  
6 upon becoming the subject of an order for relief in bankruptcy or  
7 upon conviction of a criminal offense involving dishonesty or a  
8 breach of trust.

9 (b) In the case of an association which converts from a mutual  
10 association to a stock association, for a period of up to five years  
11 from the date of the conversion, a director may not otherwise be  
12 removed except for cause on the affirmative vote of a majority of  
13 the votes of members or stockholders eligible to be cast at a legal  
14 meeting.

15 SEC. 37. Section 12307.2 of the Financial Code is amended  
16 to read:

17 12307.2. If the commissioner finds as a result of an examination  
18 or report that a licensee is insolvent or conducting business in such  
19 an unsafe or injurious manner as to render its further operations  
20 hazardous to the public, he may forthwith by an order addressed  
21 to and served on the licensee by registered mail and on any other  
22 person having funds of the licensee or its customers in his  
23 possession, direct discontinuance of the disbursement of such funds  
24 and the further conduct of business by the licensee. The order shall  
25 be conditioned to remain in effect unless the commissioner fails  
26 to hold a hearing within 15 days after receipt of a written request  
27 by the licensee, until set aside by the commissioner in whole or in  
28 part, until the licensee is the subject of an order for relief in  
29 bankruptcy, or pursuant to a petition filed by the commissioner or  
30 other interested person a receiver has been appointed by a court  
31 of competent jurisdiction.

32 SEC. 38. Section 16202 of the Financial Code is amended to  
33 read:

34 16202. If, after notice and hearing, the commissioner finds any  
35 of the following with respect to a foreign (other state) credit union  
36 that is licensed to maintain an office in this state, the commissioner  
37 may issue an order suspending or revoking the license of the  
38 foreign (other state) credit union:

39 (a) That the foreign (other state) credit union has violated a  
40 provision of this division or of any regulation or order issued under

1 this division or a provision of any other applicable law, regulation,  
2 or order.

3 (b) That the foreign (other state) credit union is transacting the  
4 business in this state or elsewhere in an unsafe or unsound manner.

5 (c) That the foreign (other state) credit union is in unsafe or  
6 unsound condition.

7 (d) That the foreign (other state) credit union has ceased to  
8 operate its office.

9 (e) That the foreign (other state) credit union is insolvent in that  
10 it has ceased to pay its debts in the ordinary course of business, it  
11 cannot pay its debts as they become due, or its liabilities, including  
12 share accounts and certificates for funds, exceed its assets.

13 (f) That the foreign (other state) credit union has suspended  
14 payment of its obligations, has made an assignment for the benefit  
15 of its creditors, or has admitted in writing its inability to pay its  
16 debts as they become due.

17 (g) That the foreign (other state) credit union is the subject of  
18 an order for relief in bankruptcy or has sought other relief under  
19 any bankruptcy, reorganization, insolvency, or moratorium law,  
20 or that any person has applied for such relief under any such law  
21 against the foreign (other state) credit union, and the foreign (other  
22 state) credit union has by any affirmative act approved of or  
23 consented to the action or the relief has been granted.

24 (h) That a receiver, liquidator, or conservator has been appointed  
25 for the foreign (other state) credit union or that any proceeding for  
26 an appointment or any similar proceeding has been initiated in the  
27 home state of the foreign (other state) credit union.

28 (i) That the existence of the foreign (other state) credit union  
29 or the authority of the foreign (other state) credit union to transact  
30 banking business under the laws of the home state of the foreign  
31 (other state) credit union has been suspended or terminated.

32 (j) That any fact or condition exists that, if it had existed at the  
33 time when the foreign (other state) credit union applied for approval  
34 to transact business in this state, would have been grounds for  
35 denying the application.

36 SEC. 39. Section 16902 of the Financial Code is amended to  
37 read:

38 16902. If, after notice and hearing, the commissioner finds any  
39 of the following with respect to a foreign (other nation) credit  
40 union that is licensed to maintain an office, the commissioner may

1 issue an order suspending or revoking the license of the foreign  
2 (other nation) credit union.

3 (a) That the foreign (other nation) credit union has violated a  
4 provision of this division or of any regulation or order issued under  
5 this division or a provision of any other applicable law, regulation,  
6 or order.

7 (b) That the foreign (other nation) credit union is transacting  
8 the business in this state or elsewhere in an unsafe or unsound  
9 manner.

10 (c) That the foreign (other nation) credit union is in unsafe or  
11 unsound condition.

12 (d) That the foreign (other nation) credit union has ceased to  
13 operate its office.

14 (e) That the foreign (other nation) credit union is insolvent in  
15 that it has ceased to pay its debts in the ordinary course of business,  
16 it cannot pay its debts as they become due, or its liabilities exceed  
17 its assets.

18 (f) That the foreign (other nation) credit union has suspended  
19 payment of its obligations, has made an assignment for the benefit  
20 of its creditors, or has admitted in writing its inability to pay its  
21 debts as they become due.

22 (g) That the foreign (other nation) credit union is the subject of  
23 an order for relief in bankruptcy or has sought other relief under  
24 any bankruptcy, reorganization, insolvency, or moratorium law,  
25 or that any person has applied for such relief under any such law  
26 against the foreign (other nation) credit union, and the foreign  
27 (other nation) credit union has by any affirmative act approved of  
28 or consented to the action or the relief has been granted.

29 (h) That a receiver, liquidator, or conservator has been appointed  
30 for the foreign (other nation) credit union or that any proceeding  
31 for an appointment or any similar proceeding has been initiated in  
32 the home country of the foreign (other nation) credit union.

33 (i) That the existence of the foreign (other nation) credit union  
34 or the authority of the foreign (other nation) credit union to transact  
35 banking business under the laws of the home country of the foreign  
36 (other nation) credit union has been suspended or terminated.

37 (j) That any fact or condition exists that, if it had existed at the  
38 time when the foreign (other nation) credit union applied for  
39 approval to transact business in this state, would have been grounds  
40 for denying the application.

1 SEC. 40. Section 17415 of the Financial Code is amended to  
2 read:

3 17415. (a) If the commissioner, as a result of any examination  
4 or from any report made to him or her, shall find that any person  
5 subject to this division is in an insolvent condition, is conducting  
6 escrow business in such an unsafe or injurious manner as to render  
7 further operations hazardous to the public or to customers, has  
8 failed to comply with the provisions of Section 17212.1 or 17414.1,  
9 has permitted its tangible net worth to be lower than the minimum  
10 required by law, has failed to maintain its liquid assets in excess  
11 of current liabilities as set forth in Section 17210, or has failed to  
12 comply with the bonding requirements of Chapter 2 (commencing  
13 with Section 17200) of this division, the commissioner may, by  
14 an order addressed to and served by registered or certified mail or  
15 by personal service on such person and on any other person having  
16 in his or her possession or control any escrowed funds, trust funds  
17 or other property deposited in escrow with said person, direct  
18 discontinuance of the disbursement of trust funds by the parties  
19 or any of them, the receipt of trust funds, the delivery or recording  
20 of documents received in escrow, or other business operations. No  
21 person having in his or her possession any of these funds or  
22 documents shall be liable for failure to comply with the order  
23 unless he or she has received written notice of the order. Subject  
24 to subdivision (b), the order shall remain in effect until set aside  
25 by the commissioner in whole or in part, the person is the subject  
26 of an order for relief in bankruptcy, or pursuant to Chapter 6  
27 (commencing with Section 17621) of this division the  
28 commissioner has assumed possession of the escrow agent.

29 (b) Within 15 days from the date of an order pursuant to  
30 subdivision (a), the person may request a hearing under the  
31 Administrative Procedure Act, Chapter 5 (commencing with  
32 Section 11500) of Division 3 of Title 2 of the Government Code.  
33 Upon receipt of a request, the matter shall be set for hearing to  
34 commence within 30 days after such receipt unless the person  
35 subject to this division consents to a later date. If no hearing is  
36 requested within 15 days after the mailing or service of such notice  
37 and none is ordered by the commissioner, the failure to request a  
38 hearing shall constitute a waiver of the right to a hearing. Neither  
39 the request for a hearing nor the hearing itself shall stay the order  
40 issued by the commissioner under subdivision (a).

1 SEC. 41. Section 18477 of the Financial Code is amended to  
2 read:

3 18477. "Thrift obligations" as used in this chapter include  
4 principal invested in investment or thrift certificates however  
5 evidenced, and unpaid interest thereon accrued as of the last interest  
6 accrual date prior to the date the commissioner takes possession  
7 of the property and business of a member or the date such member  
8 is the subject of an order for relief in bankruptcy, whichever occurs  
9 sooner.

10 SEC. 42. Section 31709 of the Financial Code is amended to  
11 read:

12 31709. If, after notice and a hearing, the commissioner finds:

13  
14 (a) That any licensee or any controlling person or affiliate of  
15 a licensee has violated any provision of this division or of any  
16 regulation or order issued under this division or any provision  
17 of any other applicable law;

18 (b) That any licensee is conducting its business in an unsafe  
19 and unsound manner;

20 (c) That any licensee is in such condition that it is unsafe or  
21 unsound for it to transact business;

22 (d) That any licensee has ceased to transact business as a  
23 business and industrial development corporation;

24 (e) That any licensee is insolvent;

25 (f) That any licensee has suspended payment of its obligations,  
26 has made an assignment for the benefit of its creditors, or has  
27 admitted in writing its inability to pay its debts as they become  
28 due;

29 (g) That any licensee is the subject of an order for relief in  
30 bankruptcy or has sought relief under any bankruptcy,  
31 reorganization, insolvency, or moratorium law, or that any person  
32 has applied for any such relief under any such law against any  
33 licensee and such licensee has by any affirmative act approved  
34 of or consented to such action or such relief has been granted;  
35 or

36 (h) That any fact or condition exists which, if it had existed at  
37 the time when any licensee applied for its license, would have  
38 been grounds for denying such application;  
39 the commissioner may issue an order suspending or revoking  
40 the license of such licensee.

1 SEC. 43. Section 34109 of the Financial Code is amended to  
2 read:

3 34109. If, after notice and a hearing, the commissioner finds:

4 (a) That any licensee has violated any provision of this division  
5 or of any regulation or order issued under this division or any  
6 provision of any other applicable law;

7 (b) That any licensee is conducting its business in an unsafe  
8 or unsound manner;

9 (c) That any licensee is in such condition that it is unsafe or  
10 unsound for it to transact the business of selling in this state  
11 payment instruments issued by it;

12 (d) That any licensee has ceased to transact the business of  
13 selling in this state payment instruments issued by it;

14 (e) That any licensee is insolvent;

15 (f) That any licensee has suspended payment of its obligations,  
16 has made an assignment for the benefit of its creditors, or has  
17 admitted in writing its inability to pay its debts as they become  
18 due;

19 (g) That any licensee is the subject of an order for relief in  
20 bankruptcy or has sought other relief under any bankruptcy,  
21 reorganization, insolvency, or moratorium law, or that any person  
22 has applied for any such relief under any such law against any  
23 licensee and such licensee has by any affirmative act approved  
24 of or consented to such action or such relief has been granted;  
25 or

26 (h) That any fact or condition exists which, if it had existed at  
27 the time when any licensee applied for its license, would have  
28 been grounds for denying such application:

29 The commissioner may issue an order suspending or revoking  
30 the license of such licensee.

31 SEC. 44. Section 50319 of the Financial Code is amended to  
32 read:

33 50319. (a) If the commissioner, as a result of any examination  
34 or from any report made to him or her, shall find that any person  
35 subject to this division is in an insolvent condition, is conducting  
36 business in an unsafe or injurious manner that renders further  
37 operations hazardous to the public or to customers, has failed to  
38 comply with the provision of Section 50317, has permitted its  
39 tangible net worth to be lower than the minimum required by law,  
40 or has failed to comply with the bonding requirements of Section

1 50205, the commissioner may, by an order addressed to and served  
2 by registered or certified mail, or by personal service on that  
3 person, and on any other person having in his or her possession or  
4 control any trust funds or other property deposited in escrow with  
5 that person, direct discontinuance of the disbursement, in whole  
6 or in part, of trust funds held by the licensee and order the  
7 establishment of a separate trust account for all subsequent trust  
8 funds received by the licensee. No person having in his or her  
9 possession any of these funds or documents shall be liable for  
10 failure to comply with the order unless he or she has received  
11 written notice of the order. Subject to subdivision (b), the order  
12 shall remain in effect until set aside by the commissioner, or the  
13 person is the subject of an order for relief in bankruptcy.

14 (b) Within 15 days from the date of an order pursuant to  
15 subdivision (a), the person may request a hearing under the  
16 Administrative Procedure Act (Chapter 5 (commencing with  
17 Section 11500) of Part 2 of Division 3 of Title 2 of the Government  
18 Code). Upon receiving a request, the matter shall be set for hearing  
19 to commence within 30 days after the receipt unless the person  
20 subject to this division consents to a later date. If no hearing is  
21 requested within 15 days after the mailing or service of the notice  
22 and none is ordered by the commissioner, the failure to request a  
23 hearing shall constitute a waiver of the right to a hearing. Neither  
24 the request for a hearing nor the hearing itself shall stay the order  
25 issued by the commissioner under subdivision (a).

26 SEC. 45. Section 1058 of the Fish and Game Code is amended  
27 to read:

28 1058. In case of an assignment for the benefit of creditors,  
29 receivership, or bankruptcy, the state shall have a preferred claim  
30 against the license assignee, receiver, or trustee for all moneys  
31 owing the state for the issuing of licenses, permits, reservations,  
32 tags, and other entitlements as provided in this code and shall not  
33 be estopped from asserting that claim by reason of the commingling  
34 of funds or otherwise.

35 SEC. 46. Section 58503.1 of the Food and Agricultural Code  
36 is amended to read:

37 58503.1. In order to qualify as a food bank, an organization  
38 shall meet all of the following minimum standards:

1 (a) It shall have access to storage facilities and refrigeration  
2 equipment for the purpose of collecting, receiving, handling,  
3 storing, and distributing donated agricultural products.

4 (b) It shall be incorporated as a nonprofit tax exempt  
5 organization and be eligible as a charitable organization under  
6 paragraph (3) of subsection (c) of Section 501 of Title 26 of the  
7 United States Code or shall be affiliated with such an organization.

8 (c) It shall maintain records for the proper control of inventory.

9 (d) It shall demonstrate the availability of adequate liability  
10 insurance to cover the activities conducted pursuant to this chapter.

11 (e) It shall show local support through funding sources, letters  
12 of endorsement, and a board of directors reflective of the  
13 community and population to be served.

14 SEC. 47. Section 65863.7 of the Government Code is amended  
15 to read:

16 65863.7. (a) Prior to the conversion of a mobilehome park to  
17 another use, except pursuant to the Subdivision Map Act (Division  
18 2 (commencing with Section 66410) of Title 7), or prior to closure  
19 of a mobilehome park or cessation of use of the land as a  
20 mobilehome park, the person or entity proposing the change in  
21 use shall file a report on the impact of the conversion, closure, or  
22 cessation of use upon the displaced residents of the mobilehome  
23 park to be converted or closed. In determining the impact of the  
24 conversion, closure, or cessation of use on displaced mobilehome  
25 park residents, the report shall address the availability of adequate  
26 replacement housing in mobilehome parks and relocation costs.

27 (b) The person proposing the change in use shall provide a copy  
28 of the report to a resident of each mobilehome in the mobilehome  
29 park at least 15 days prior to the hearing, if any, on the impact  
30 report by the advisory agency, or if there is no advisory agency,  
31 by the legislative body.

32 (c) When the impact report is filed prior to the closure or  
33 cessation of use, the person or entity proposing the change shall  
34 provide a copy of the report to a resident of each mobilehome in  
35 the mobilehome park at the same time as the notice of the change  
36 is provided to the residents pursuant to paragraph (2) of subdivision  
37 (g) of Section 798.56 of the Civil Code.

38 (d) When the impact report is filed prior to the closure or  
39 cessation of use, the person or entity filing the report or park



1 resident may request, and shall have a right to, a hearing before  
2 the legislative body on the sufficiency of the report.

3 (e) The legislative body, or its delegated advisory agency, shall  
4 review the report, prior to any change of use, and may require, as  
5 a condition of the change, the person or entity to take steps to  
6 mitigate any adverse impact of the conversion, closure, or cessation  
7 of use on the ability of displaced mobilehome park residents to  
8 find adequate housing in a mobilehome park. The steps required  
9 to be taken to mitigate shall not exceed the reasonable costs of  
10 relocation.

11 (f) If the closure or cessation of use of a mobilehome park results  
12 from the entry of an order for relief in bankruptcy, the provisions  
13 of this section shall not be applicable.

14 (g) The legislative body may establish reasonable fees pursuant  
15 to Section 66016 to cover any costs incurred by the local agency  
16 in implementing this section and Section 65863.8. Those fees shall  
17 be paid by the person or entity proposing the change in use.

18 (h) This section is applicable to charter cities.

19 (i) This section is applicable when the closure, cessation, or  
20 change of use is the result of a decision by a local governmental  
21 entity or planning agency not to renew a conditional use permit or  
22 zoning variance under which the mobilehome park has operated,  
23 or as a result of any other zoning or planning decision, action, or  
24 inaction. In this case, the local governmental agency is the person  
25 proposing the change in use for the purposes of preparing the  
26 impact report required by this section and is required to take steps  
27 to mitigate the adverse impact of the change as may be required  
28 in subdivision (e).

29 (j) This section is applicable when the closure, cessation, or  
30 change of use is the result of a decision by an enforcement agency,  
31 as defined in Section 18207 of the Health and Safety Code, to  
32 suspend the permit to operate the mobilehome park. In this case,  
33 the mobilehome park owner is the person proposing the change in  
34 use for purposes of preparing the impact report required by this  
35 section and is required to take steps to mitigate the adverse impact  
36 of the change as may be required in subdivision (e).

37 SEC. 48. Section 65863.12 of the Government Code is amended  
38 to read:

39 65863.12. (a) Prior to the conversion of a floating home marina  
40 to another use, except pursuant to the Subdivision Map Act

(Division 2 (commencing with Section 66410) of Title 7), or prior to closure of a floating home marina or cessation of use of the land as a floating home marina, the person or entity proposing the change in use shall file a report on the impact of the conversion, closure, or cessation of use upon the displaced residents of the floating home marina to be converted or closed. In determining the impact of the conversion, closure, or cessation of use on displaced floating home marina residents, the report shall address the availability of adequate replacement housing in floating home marinas and relocation costs.

(b) The person proposing the change in use shall provide a copy of the report to a resident of each floating home in the floating home marina at least 15 days prior to the hearing, if any, on the impact report by the advisory agency, or if there is no advisory agency, by the legislative body.

(c) When the impact report is filed prior to the closure or cessation of use, the person or entity proposing the change shall provide a copy of the report to a resident of each floating home in the floating home marina at the same time as the notice of the change is provided to the residents pursuant to subdivision (f) of Section 800.71 of the Civil Code.

(d) When the impact report is filed prior to the closure or cessation of use, the person or entity filing the report or any resident may request, and shall have a right to, a hearing before the legislative body on the sufficiency of the report.

(e) The legislative body, or its delegated advisory agency, shall review the report, prior to any change of use, and may require, as a condition of the change, the person or entity to take steps to mitigate any adverse impact of the conversion, closure, or cessation of use on the ability of displaced floating home marina residents to find adequate housing in a floating home marina. The steps required to be taken to mitigate shall not exceed the reasonable costs of relocation.

(f) If the closure or cessation of use of a floating home marina results from the entry of an order for relief in bankruptcy, the provisions of this section shall not be applicable.

(g) The legislative body may establish reasonable fees pursuant to Chapter 13 (commencing with Section 54990) of Part 1 of Division 2 of Title 5 to cover any costs incurred by the local agency

1 in implementing this section. Those fees shall be paid by the person  
2 or entity proposing the change in use.

3 (h) This section is applicable to charter cities.

4 (i) This section is applicable when the closure, cessation, or  
5 change of use is the result of a decision by a local governmental  
6 entity or planning agency not to renew a conditional use permit or  
7 zoning variance under which the floating home marina has  
8 operated, or as a result of any other zoning or planning decision,  
9 action, or inaction. However, a state or local governmental agency  
10 is not required to take steps to mitigate the adverse impact of the  
11 change pursuant to subdivision (e).

12 (j) This section applies to any floating home marina as defined  
13 in Section 800.4 of the Civil Code, and to any marina or harbor  
14 (1) which is managed by a nonprofit organization, the property,  
15 assets, and profits of which may not inure to any individual or  
16 group of individuals, but only to another nonprofit organization;  
17 (2) the rules and regulations of which are set by majority vote of  
18 the berthholders thereof; and (3) which contains berths for fewer  
19 than 25 floating homes.

20 SEC. 49. Section 1358.4 of the Health and Safety Code is  
21 amended to read:

22 1358.4. The following definitions apply for the purposes of  
23 this article:

24 (a) "Applicant" means:

25 (1) An individual enrollee who seeks to contract for health  
26 coverage, in the case of an individual Medicare supplement  
27 contract.

28 (2) An enrollee who seeks to obtain health coverage through a  
29 group, in the case of a group Medicare supplement contract.

30 (b) "Bankruptcy" means that situation in which a Medicare  
31 Advantage organization that is not an issuer has filed, or has had  
32 filed against it, a petition under federal bankruptcy law and has  
33 ceased doing business in the state.

34 (c) "Continuous period of creditable coverage" means the period  
35 during which an individual was covered by creditable coverage,  
36 if during the period of the coverage the individual had no breaks  
37 in coverage greater than 63 days.

38 (d) (1) "Creditable coverage" means, with respect to an  
39 individual, coverage of the individual provided under any of the  
40 following:

1 (A) Any individual or group contract, policy, certificate, or  
2 program that is written or administered by a health care service  
3 plan, health insurer, fraternal benefits society, self-insured  
4 employer plan, or any other entity, in this state or elsewhere, and  
5 that arranges or provides medical, hospital, and surgical coverage  
6 not designed to supplement other private or governmental plans.

7 The term includes continuation or conversion coverage.

8 (B) Part A or B of Title XVIII of the federal Social Security  
9 Act (Medicare).

10 (C) Title XIX of the federal Social Security Act (medicaid),  
11 other than coverage consisting solely of benefits under Section  
12 1928 of that act.

13 (D) Chapter 55 of Title 10 of the United States Code  
14 (CHAMPUS).

15 (E) A medical care program of the Indian Health Service or of  
16 a tribal organization.

17 (F) A state health benefits risk pool.

18 (G) A health plan offered under Chapter 89 of Title 5 of the  
19 United States Code (Federal Employees Health Benefits Program).

20 (H) A public health plan as defined in federal regulations  
21 authorized by Section 2701(c)(1)(I) of the federal Public Health  
22 Service Act, as amended by Public Law 104-191, the federal Health  
23 Insurance Portability and Accountability Act of 1996.

24 (I) A health benefit plan under Section 5(e) of the federal Peace  
25 Corps Act (Section 2504(e) of Title 22 of the United States Code).

26 (J) Any other publicly sponsored program, provided in this state  
27 or elsewhere, of medical, hospital, and surgical care.

28 (K) Any other creditable coverage as defined by subsection (c)  
29 of Section 2701 of Title XXVII of the federal Public Health  
30 Services Act (42 U.S.C. Sec. 300gg(c)).

31 (2) "Creditable coverage" shall not include one or more, or any  
32 combination of, the following:

33 (A) Coverage for accident-only or disability income insurance,  
34 or any combination thereof.

35 (B) Coverage issued as a supplement to liability insurance.

36 (C) Liability insurance, including general liability insurance  
37 and automobile liability insurance.

38 (D) Workers' compensation or similar insurance.

39 (E) Automobile medical payment insurance.

40 (F) Credit-only insurance.

1 (G) Coverage for onsite medical clinics.

2 (H) Other similar insurance coverage, specified in federal  
3 regulations, under which benefits for medical care are secondary  
4 or incidental to other insurance benefits.

5 (3) “Creditable coverage” shall not include the following  
6 benefits if they are provided under a separate policy, certificate,  
7 or contract or are otherwise not an integral part of the plan:

8 (A) Limited scope dental or vision benefits.

9 (B) Benefits for long-term care, nursing home care, home health  
10 care, community-based care, or any combination thereof.

11 (C) Other similar, limited benefits as are specified in federal  
12 regulations.

13 (4) “Creditable coverage” shall not include the following  
14 benefits if offered as independent, noncoordinated benefits:

15 (A) Coverage only for a specified disease or illness.

16 (B) Hospital indemnity or other fixed indemnity insurance.

17 (5) “Creditable coverage” shall not include the following if  
18 offered as a separate policy, certificate, or contract:

19 (A) Medicare supplemental health insurance as defined under  
20 Section 1882(g)(1) of the federal Social Security Act.

21 (B) Coverage supplemental to the coverage provided under  
22 Chapter 55 of Title 10 of the United States Code.

23 (C) Similar supplemental coverage provided to coverage under  
24 a group health plan.

25 (e) “Employee welfare benefit plan” means a plan, fund, or  
26 program of employee benefits as defined in Section 1002 of Title  
27 29 of the United States Code (Employee Retirement Income  
28 Security Act).

29 (f) “Insolvency” means when an issuer, licensed to transact the  
30 business of a health care service plan in this state, has had a final  
31 order of liquidation entered against it with a finding of insolvency  
32 by a court of competent jurisdiction in the issuer’s state of domicile.

33 (g) “Issuer” means a health care service plan delivering, or  
34 issuing for delivery, Medicare supplement contracts in this state,  
35 but does not include entities subject to Article 6 (commencing with  
36 Section 10192.1) of Chapter 1 of Division 2 of the Insurance Code.

37 (h) “Medicare” means the federal Health Insurance for the Aged  
38 Act, Title XVIII of the Social Security Amendments of 1965, as  
39 amended.

1 (i) “Medicare Advantage Plan” means a plan of coverage for  
2 health benefits under Medicare Part C and includes:

3 (1) Coordinated care plans that provide health care services,  
4 including, but not limited to, health care service plans (with or  
5 without a point-of-service option), plans offered by  
6 provider-sponsored organizations, and preferred provider  
7 organizations plans.

8 (2) Medical savings account plans coupled with a contribution  
9 into a Medicare Advantage medical savings account.

10 (3) Medicare Advantage private fee-for-service plans.

11 (j) “Medicare supplement contract” means a group or individual  
12 plan contract of hospital and medical service associations or health  
13 care service plans, other than a contract issued pursuant to a  
14 contract under Section 1876 of the federal Social Security Act (42  
15 U.S.C.A. Section 1395mm) or an issued contract under a  
16 demonstration project specified in Section 1395ss(g)(1) of Title  
17 42 of the United States Code, that is advertised, marketed, or  
18 designed primarily as a supplement to reimbursements under  
19 Medicare for the hospital, medical, or surgical expenses of persons  
20 eligible for Medicare. “Contract” means “Medicare supplement  
21 contract,” unless the context requires otherwise. “Medicare  
22 supplement contract” does not include a Medicare Advantage plan  
23 established under Medicare Part C, an outpatient prescription drug  
24 plan established under Medicare Part D, or a health care  
25 prepayment plan that provides benefits pursuant to an agreement  
26 under subparagraph (A) of paragraph (1) of subsection (a) of  
27 Section 1833 of the Social Security Act.

28 (k) “Secretary” means the Secretary of the United States  
29 Department of Health and Human Services.

30 SEC. 50. Section 1793.62 of the Health and Safety Code is  
31 amended to read:

32 1793.62. (a) The department, administrator, or any interested  
33 person, upon due notice to the parties, may petition the court for  
34 an order terminating the rehabilitation proceedings when the  
35 rehabilitation efforts have not been successful, the continuing care  
36 retirement community has been sold at foreclosure sale, the  
37 provider is the subject of an order for relief in bankruptcy, ~~has~~  
38 ~~been declared bankrupt~~, or the provider has otherwise been shown  
39 to be unable to perform its obligations under the continuing care  
40 contracts.

1 (b) The court shall not issue the order requested pursuant to  
2 subdivision (a) unless all of the following have occurred:

3 (1) There has been a full hearing and the court has determined  
4 that the provider is unable to perform its contractual obligations.

5 (2) The administrator has given the court a full and complete  
6 report and financial accounting signed by the administrator as  
7 being a full and complete report and accounting.

8 (3) The court has determined that the residents of the continuing  
9 care retirement community have been protected to the extent  
10 possible and has made such orders in this regard as the court deems  
11 proper.

12 SEC. 51. Section 129174.1 of the Health and Safety Code is  
13 amended to read:

14 129174.1. In the event an obligor on a loan insured by the  
15 office is the subject of an order for relief in bankruptcy and that a  
16 plan has been proposed for confirmation, upon a certification by  
17 the office that the insurance is in place and would be in place if  
18 the plan were confirmed, then the office shall have the right to  
19 vote whether to accept or reject the plan on behalf of the holders  
20 of the loan insured by the office.

21 SEC. 52. Section 25169.3 of the Health and Safety Code is  
22 amended to read:

23 25169.3. Before hazardous waste is transported from an  
24 abandoned site to another disposal site, all of the following  
25 conditions shall be met:

26 (a) The department shall conduct such tests, or cause such tests  
27 to be completed by the responsible party, as are necessary to  
28 determine the general chemical and mineral composition of  
29 hazardous waste that is being transported.

30 (b) The hazardous waste hauler shall prepare a transportation  
31 and safety plan outlining safety features and procedures to be used  
32 by the hauler to protect the public during the transportation process.

33 (c) The department shall review and approve the transportation  
34 and safety plan.

35 (d) The hazardous waste hauler shall, under penalty of perjury,  
36 certify that he or she will follow the provisions of the transportation  
37 and safety plan.

38 (e) The department shall issue a certificate to the hazardous  
39 waste hauler certifying that the transportation and safety plan has  
40 been approved by the department. The person transporting the

1 waste shall have the certificate in his or her possession while  
2 transporting the waste. Such certificate shall be shown upon  
3 demand to any department official, officer of the California  
4 Highway Patrol, or any local health officer.

5 The term “abandoned site”, as used in this section, means an  
6 inactive waste disposal, treatment, or storage facility which cannot,  
7 with reasonable effort, be traced to a specific owner; a site whose  
8 owner is the subject of an order for relief in bankruptcy, or who  
9 has not taken corrective action on or before the date specified in  
10 an order issued pursuant to Section 25187; or a location where  
11 hazardous waste has been illegally disposed.

12 (f) The requirements of this section shall not apply when the  
13 hazardous waste disposal is the direct result of an accidental spill  
14 or the department determines that emergency action is needed to  
15 protect the environment or the public health.

16 SEC. 53. Section 25245 of the Health and Safety Code is  
17 amended to read:

18 25245. (a) The department shall adopt, and revise when  
19 appropriate, standards and regulations which shall do both of the  
20 following:

21 (1) Specify the financial assurances to be provided by the owner  
22 or operator of a hazardous waste facility that are necessary to  
23 respond adequately to damage claims arising out of the operation  
24 of that type of facility and to provide for the cost of closure and  
25 subsequent maintenance of the facility, including, but not limited  
26 to, the monitoring of groundwater and other aspects of the  
27 environment after closure. If the facility is required to obtain a  
28 permit under the federal act, the financial assurance shall be a trust  
29 fund, surety bond, letter of credit, insurance, or any other  
30 mechanism authorized under the federal act and the regulations  
31 adopted pursuant to the federal act. If the facility is not required  
32 to obtain a permit under the federal act, the financial assurance  
33 may include any other equivalent financial arrangement acceptable  
34 to the department.

35 (2) Provide that every hazardous waste facility can be closed  
36 and maintained for at least 30 years subsequent to its closure in a  
37 manner that protects human health and the environment and  
38 minimizes or eliminates the escape of hazardous waste constituents,  
39 leachate, contaminated rainfall, and waste decomposition products  
40 to ground and surface waters and to the atmosphere.



1 (b) In adopting regulations pursuant to subdivision (a), to carry  
2 out the purposes of this chapter, the department may specify policy  
3 or other contractual terms, conditions, or defenses which are  
4 necessary or are unacceptable in establishing evidence of financial  
5 responsibility.

6 (1) If an owner or operator is in bankruptcy pursuant to Title  
7 11 of the United States Code, or where, with reasonable diligence,  
8 jurisdiction in any state or federal court cannot be obtained over  
9 an owner or operator likely to be solvent at the time of judgment,  
10 any claim arising from conduct for which this section requires  
11 evidence of financial responsibility may be asserted directly against  
12 the guarantor who provided the evidence of financial responsibility.

13 (2) The total liability of any guarantor is limited to the aggregate  
14 amount which the guarantor has provided as evidence of financial  
15 responsibility to the owner or operator under this chapter.

16 (3) This subdivision does not limit any other state or federal  
17 statutory, contractual, or common law liability of a guarantor to  
18 the owner or operator, including, but not limited to, the liability  
19 of the guarantor for bad faith in either negotiating or in failing to  
20 negotiate the settlement of any claim.

21 (4) This subdivision does not diminish the liability of any person  
22 under Section 107 or 111 of the Comprehensive Environmental  
23 Response, Compensation, and Liability Act of 1980 (42 U.S.C.  
24 Secs. 9607 and 9611).

25 (5) For purposes of this subdivision, “guarantor” means any  
26 person, other than the owner or operator, who provides evidence  
27 of financial responsibility for an owner or operator under this  
28 section.

29 SEC. 54. Section 25359.5 of the Health and Safety Code is  
30 amended to read:

31 25359.5. (a) After making a determination, based upon a  
32 preliminary site assessment that there has been a release of a  
33 hazardous substance on, under, or into the land on a site, the  
34 department or a county health officer shall order the property owner  
35 to secure the site if all of the following conditions apply to that  
36 site:

37 (1) The release does not comply with the terms of a current  
38 permit or interim status document or regulation of the department.

39 (2) The site poses a public health risk if human contact is made  
40 with the hazardous waste or the surrounding contaminated area.

1 (3) There is a likelihood of human or domestic animal contact.

2 (b) The order to secure the site shall require, within five days  
3 after receiving notification of the order, the posting of the site with  
4 signs. The order shall also require, within five days after receiving  
5 notification of the order, that the site be enclosed with a fence,  
6 unless it is physically and economically infeasible or unless the  
7 fencing is unnecessary because it will not alleviate the danger to  
8 the public health.

9 (c) If fencing is ordered, the fences shall be maintained at the  
10 site to prevent unauthorized persons from gaining access to the  
11 site. The signs shall be maintained and shall meet all of the  
12 following requirements:

13 (1) The signs shall be bilingual, appropriate to the local area,  
14 and may include international symbols, as required by the  
15 department.

16 (2) The signs shall have lettering which is legible from a distance  
17 of at least 25 feet.

18 (3) The signs shall read: "Caution: Hazardous Substance Area,  
19 Unauthorized Persons Keep Out" and shall have the name and  
20 phone number of the department or the county health officer that  
21 ordered the posting.

22 (4) The signs shall be visible from the surrounding contaminated  
23 area and posted at each route of entry into the site, including those  
24 routes which are likely to be used by unauthorized persons, at  
25 access roads leading to the site, and facing navigable waterways  
26 where appropriate.

27 (5) The signs shall be of a material able to withstand the  
28 elements.

29 (d) A property owner who fails to comply with an order of the  
30 department or the county health officer is subject to a civil penalty  
31 of up to twenty-five thousand dollars (\$25,000). In determining  
32 the amount of a civil penalty to be imposed, the court shall consider  
33 all relevant circumstances, including, but not limited to, the  
34 economic assets of the property owner and whether the property  
35 owner has acted in good faith.

36 If the property owner fails to secure and post the site, the  
37 department or the county health officer shall secure and post the  
38 site pursuant to subdivision (b) within 30 days of the expiration  
39 of the five-day period and shall seek recovery of the costs of that  
40 securing and posting from the property owner. If the site is an

1 abandoned site, as defined in Section 25359.6, if the site cannot  
2 be traced to a specific owner, or if the owner is the subject of an  
3 order for relief in bankruptcy, the department or the county health  
4 officer shall secure and post the site, using any source of funds,  
5 pursuant to subdivision (b).

6 (e) The department or the county health officer shall advise  
7 other agencies on the public health risks and the need for fencing  
8 and posting of sites when those agencies confirm the release of a  
9 hazardous substance pursuant to subdivision (a).

10 (f) The remedies and penalties specified in this section and  
11 Section 25359.6 are in addition to, and do not affect, any other  
12 remedies, enforcement actions, requirements, or penalties otherwise  
13 authorized by law.

14 SEC. 55. Section 25359.6 of the Health and Safety Code is  
15 amended to read:

16 25359.6. (a) The director shall notify, within 20 working days,  
17 each of the appropriate county health officers as to all the potential  
18 abandoned sites of which the department has knowledge or which  
19 the department is investigating for releases of hazardous substances  
20 that may have occurred or might be occurring at abandoned sites.  
21 The county health officers may request quarterly updates on the  
22 status of the investigations of these sites.

23 As used in this section, “abandoned site” means an inactive  
24 disposal, treatment, or storage facility which cannot, with  
25 reasonable effort, be traced to a specific owner, a site whose owner  
26 is the subject of an order for relief in bankruptcy, or a location  
27 where a hazardous substance has been illegally disposed.

28 (b) Within 10 working days of the identification of an abandoned  
29 site, the department or a county health officer shall notify the other  
30 agency of the status of the site. The department and the county  
31 health officer shall inform the other agency of orders to fence and  
32 post these sites and the status of compliance with those orders.  
33 The department or the county health officers may request quarterly  
34 updates of the testing, enforcement action, and remedial or removal  
35 actions that are proposed or ongoing.

36 SEC. 56. Section 25396 of the Health and Safety Code is  
37 amended to read:

38 25396. Unless the context indicates otherwise, the following  
39 definitions govern the construction of this chapter.

1 (a) “Affected community” means the local residents or workers  
2 living or working, and owners of businesses operating, in proximity  
3 to the site, who are, or may be, directly impacted by the conditions  
4 at the site, or by any response action. “Affected community” also  
5 includes the legislative body of the jurisdiction in which a site is  
6 located.

7 (b) “Agency” means the California Environmental Protection  
8 Agency.

9 (c) “Arbitration panel” means the arbitration panel convened  
10 pursuant to Section 25398.10.

11 (d) “Beneficial uses of water” means uses of the waters of the  
12 state that are identified in the current State Water Resources  
13 Control Board and California regional water quality control boards’  
14 water quality control plans for the area in which the site is located.

15 (e) “Department” means the Department of Toxic Substances  
16 Control.

17 (f) “Engineering controls” means measures to control or contain  
18 migration of hazardous substances or to prevent, minimize or  
19 mitigate environmental damage which may otherwise result from  
20 a release or threatened release, including, but not limited to, caps,  
21 covers, dikes, trenches, leachate collection systems, treatment  
22 systems, and groundwater containment systems or procedures.

23 (g) “Federal act” means the Comprehensive Environmental  
24 Response, Compensation, and Liability Act of 1980, as amended,  
25 (42 U.S.C. Sec. 9601 et seq.).

26 (h) “Fund administrator” means the state officer assigned the  
27 responsibility of protecting the viability of the trust fund as the  
28 representative of the state for the orphan share in all actions  
29 concerning apportionment of liability if there is a potential  
30 apportionment of liability to the orphan share for payment from  
31 the trust fund.

32 (i) “Hazardous substance” shall have the same meaning as set  
33 forth in Sections 25316 and 25317.

34 (j) (1) “Insolvent” means a person or entity who has received  
35 a discharge of liability under Section 727, 944, 1141, 1228, or  
36 1328 of Title 11 of the United States Code, for pre-petition  
37 response costs relating to a site selected for response actions  
38 pursuant to this chapter.

39 (2) Notwithstanding paragraph (1), a person or entity is not  
40 insolvent with respect to any payment that the department receives

1 or will receive for any pre-petition response costs as a result of the  
2 bankruptcy, or with respect to any post-petition response costs.

3 (k) "Interim endangerment" means conditions at a site which  
4 pose a significant risk either of harm to human health or of serious  
5 environmental damage unless immediate response action is initiated  
6 before remedial action measures set forth in a remedial action plan  
7 prepared for the site are implemented.

8 (l) "Land use controls" means recorded instruments restricting  
9 the present and future uses of the site, including, but not limited  
10 to, recorded easements, covenants, restrictions or servitudes, or  
11 any combination thereof, as appropriate. Land use controls shall  
12 run with the land from the date of recordation, shall bind all of the  
13 owners of the land, and their heirs, successors, and assignees, and  
14 the agents, employees, and lessees of the owners, heirs, successors,  
15 and assignees, and shall be enforceable by the department pursuant  
16 to Article 8 (commencing with Section 25180) of Chapter 6.5.

17 (m) "Orphan share" means that share of liability for the costs  
18 of response actions apportioned to responsible persons who are  
19 insolvent or cannot be identified or located. The department may  
20 adopt regulations to further define a process to determine when a  
21 responsible person cannot be identified or located.

22 (n) "Person" shall have the same meaning as set forth in Section  
23 25319.

24 (o) "Planned use" means the reasonably expected future land  
25 uses based on all of the following factors:

26 (1) The land use history of the site and surrounding properties,  
27 the current land uses of the site and surrounding properties and  
28 recent development patterns in the area where the site is located.

29 (2) Land use designations at the site and surrounding properties,  
30 including current and likely future zoning and local land use plans  
31 and the presence, if any, of groundwater and surface water recharge  
32 areas.

33 (3) The potential for economic redevelopment.

34 (4) Current plans for the site by the property owner or owners.

35 (5) Affected community comments on the proposals for use of  
36 the site.

37 (p) "Release" has the same meaning as set forth in Sections  
38 25320 and 25321.

39 (q) "Remedy" or "remedial action" means actions that are  
40 necessary to prevent, minimize, or mitigate damage that may result

1 from a release or threatened release of a hazardous substance and  
2 that, when carried through to completion, allow a site to be  
3 permanently used for its planned use without any significant risk  
4 to human health or any significant potential for future  
5 environmental damage. “Remedy” or “remedial action” includes,  
6 but is not limited to, all of the following:

7 (1) Actions at the location of the release, such as storage,  
8 confinement, perimeter protection using dikes, trenches, or ditches,  
9 clay cover, neutralization, cleanup of released hazardous substances  
10 and associated contaminated materials, recycling, reuse, diversion,  
11 destruction, or segregation of reactive wastes, dredging, excavation,  
12 repair, or replacement of leaking containers, collection of leachate  
13 and runoff, onsite treatment or incineration, provision of alternative  
14 water supplies, and any monitoring reasonably required to ensure  
15 that these actions protect human health and safety, or the  
16 environment.

17 (2) The costs of permanent relocation of residents and businesses  
18 and community facilities where the Governor determines that,  
19 alone or in combination with other measures, that relocation is  
20 more cost-effective than, and environmentally preferable to, the  
21 transportation, storage, treatment, destruction, or secure disposition  
22 offsite of hazardous substances, or may otherwise be necessary to  
23 protect human health and safety, or the environment.

24 (3) Offsite transport and offsite storage, treatment, destruction,  
25 or secure disposition of hazardous substances and associated  
26 contaminated materials.

27 (r) “Remove” or “removal” means the cleanup or removal of  
28 released hazardous substances from the environment, those actions  
29 which may be necessarily taken in the event of the threat or release  
30 of hazardous substances into the environment, those actions which  
31 may be necessary to monitor, assess, and evaluate the release, or  
32 threat of release, of hazardous substances, the disposal of removed  
33 material, and the taking of other actions which may be necessary  
34 to prevent, minimize, or mitigate damage to human health and  
35 safety, or the environment, which may otherwise result from a  
36 release or threat of release. “Remove” or “removal” also includes,  
37 but is not limited to, security fencing or other measures to limit  
38 access, provision of alternative water supplies, and temporary  
39 evacuation and housing of threatened individuals not otherwise  
40 provided.

(s) “Respond,” “response,” or “response action” means removal actions, and remedial actions, including, but not limited to, operation and maintenance measures.

(t) “Response costs” means all costs incurred by the state or any responsible person in taking response actions under this chapter at a specific site, including costs incurred by any state agency in implementing and administering this chapter pursuant to the limitations established in subdivision (f) of Section 25399, and in overseeing response actions under this chapter. Those costs shall include all costs incurred by the state in relation to any judicial review of a decision of an arbitration panel pursuant to subdivision (e) of Section 25398.10 or any arbitration conducted pursuant to this chapter.

(u) “Responsible person” has the same meaning as set forth in Section 25323.5 for “responsible party” or “liable person.”

(v) “Secretary” means the Secretary for Environmental Protection.

(w) “Site” means any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or any area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

(x) “Site Designation Committee” or “committee” means the Site Designation Committee created pursuant to Section 25261.

(y) “State board” means the State Water Resources Control Board.

(z) “Trust fund” means the Expedited Site Remediation Trust Fund created pursuant to subdivision (a) of Section 25399.1.

SEC. 57. Section 10192.4 of the Insurance Code is amended to read:

10192.4. The following definitions apply for the purposes of this article:

(a) “Applicant” means:

(1) The person who seeks to contract for insurance benefits, in the case of an individual Medicare supplement policy.

(2) The proposed certificate holder, in the case of a group Medicare supplement policy.

1 (b) “Bankruptcy” means that situation in which a Medicare  
2 Advantage organization that is not an issuer has filed, or has had  
3 filed against it, a petition for bankruptcy and has ceased doing  
4 business in the state.

5 (c) “Certificate” means a certificate issued for delivery in this  
6 state under a group Medicare supplement policy.

7 (d) “Certificate form” means the form on which the certificate  
8 is issued for delivery by the issuer.

9 (e) “Continuous period of creditable coverage” means the period  
10 during which an individual was covered by creditable coverage,  
11 if during the period of the coverage the individual had no breaks  
12 in coverage greater than 63 days.

13 (f) (1) “Creditable coverage” means, with respect to an  
14 individual, coverage of the individual provided under any of the  
15 following:

16 (A) Any individual or group contract, policy, certificate, or  
17 program that is written or administered by a health care service  
18 plan, health insurer, fraternal benefits society, self-insured  
19 employer plan, or any other entity, in this state or elsewhere, and  
20 that arranges or provides medical, hospital, and surgical coverage  
21 not designed to supplement other private or governmental plans.  
22 The term includes continuation or conversion coverage.

23 (B) Part A or B of Title XVIII of the federal Social Security  
24 Act (Medicare).

25 (C) Title XIX of the federal Social Security Act (Medicaid),  
26 other than coverage consisting solely of benefits under Section  
27 1928 of that act.

28 (D) Chapter 55 of Title 10 of the United States Code  
29 (CHAMPUS).

30 (E) A medical care program of the Indian Health Service or of  
31 a tribal organization.

32 (F) A state health benefits risk pool.

33 (G) A health plan offered under Chapter 89 of Title 5 of the  
34 United States Code (Federal Employees Health Benefits Program).

35 (H) A public health plan as defined in federal regulations  
36 authorized by Section 2701(c)(1)(I) of the federal Public Health  
37 Service Act, as amended by Public Law 104-191, the federal Health  
38 Insurance Portability and Accountability Act of 1996.

39 (I) A health benefit plan under Section 5(e) of the federal Peace  
40 Corps Act (Section 2504(e) of Title 22 of the United States Code).



1 (J) Any other publicly sponsored program, provided in this state  
2 or elsewhere, of medical, hospital, and surgical care.

3 (K) Any other creditable coverage as defined by subsection (c)  
4 of Section 2701 of Title XXVII of the federal Public Health  
5 Services Act (42 U.S.C. Sec. 300gg(c)).

6 (2) "Creditable coverage" shall not include one or more, or any  
7 combination of, the following:

8 (A) Coverage only for accident or disability income insurance,  
9 or any combination thereof.

10 (B) Coverage issued as a supplement to liability insurance.

11 (C) Liability insurance, including general liability insurance  
12 and automobile liability insurance.

13 (D) Workers' compensation or similar insurance.

14 (E) Automobile medical payment insurance.

15 (F) Credit-only insurance.

16 (G) Coverage for onsite medical clinics.

17 (H) Other similar insurance coverage, specified in federal  
18 regulations, under which benefits for medical care are secondary  
19 or incidental to other insurance benefits.

20 (3) "Creditable coverage" shall not include the following  
21 benefits if they are provided under a separate policy, certificate,  
22 or contract of insurance or are otherwise not an integral part of the  
23 plan:

24 (A) Limited scope dental or vision benefits.

25 (B) Benefits for long-term care, nursing home care, home health  
26 care, community-based care, or any combination thereof.

27 (C) Other similar, limited benefits as are specified in federal  
28 regulations.

29 (4) "Creditable coverage" shall not include the following  
30 benefits if offered as independent, noncoordinated benefits:

31 (A) Coverage only for a specified disease or illness.

32 (B) Hospital indemnity or other fixed indemnity insurance.

33 (5) "Creditable coverage" shall not include the following if  
34 offered as a separate policy, certificate, or contract of insurance:

35 (A) Medicare supplemental health insurance as defined under  
36 Section 1882(g)(1) of the federal Social Security Act.

37 (B) Coverage supplemental to the coverage provided under  
38 Chapter 55 of Title 10 of the United States Code.

39 (C) Similar supplemental coverage provided to coverage under  
40 a group health plan.

1 (g) “Employee welfare benefit plan” means a plan, fund, or  
2 program of employee benefits as defined in Section 1002 of Title  
3 29 of the United States Code (Employee Retirement Income  
4 Security Act).

5 (h) “Insolvency” means when an issuer, licensed to transact the  
6 business of insurance in this state, has had a final order of  
7 liquidation entered against it with a finding of insolvency by a  
8 court of competent jurisdiction in the issuer’s state of domicile.

9 (i) “Issuer” includes insurance companies, fraternal benefit  
10 societies, and any other entity delivering, or issuing for delivery,  
11 Medicare supplement policies or certificates in this state, except  
12 entities subject to Article 3.5 (commencing with Section 1358) of  
13 Chapter 2.2 of Division 2 of the Health and Safety Code.

14 (j) “Medicare” means the Health Insurance for the Aged Act,  
15 Title XVIII of the Social Security Amendments of 1965, as  
16 amended.

17 (k) “Medicare Advantage plan” means a plan of coverage for  
18 health benefits under Medicare Part C and includes:

19 (1) Coordinated care plans that provide health care services,  
20 including, but not limited to, health care service plans (with or  
21 without a point-of-service option), plans offered by  
22 provider-sponsored organizations, and preferred provider  
23 organizations plans.

24 (2) Medical savings account plans coupled with a contribution  
25 into a Medicare Advantage medical savings account.

26 (3) Medicare Advantage private fee-for-service plans.

27 (l) “Medicare supplement policy” means a group or individual  
28 policy of health insurance, other than a policy issued pursuant to  
29 a contract under Section 1876 of the federal Social Security Act  
30 (42 U.S.C. Section 1395mm) or an issued policy under a  
31 demonstration project specified in Section 1395ss(g)(1) of Title  
32 42 of the United States Code, that is advertised, marketed, or  
33 designed primarily as a supplement to reimbursements under  
34 Medicare for the hospital, medical, or surgical expenses of persons  
35 eligible for Medicare. “Medicare supplement policy” does not  
36 include a Medicare Advantage plan established under Medicare  
37 Part C, an outpatient prescription drug plan established under  
38 Medicare Part D, or a health care prepayment plan that provides  
39 benefits pursuant to an agreement under subparagraph (A) of

1 paragraph (1) of subsection (a) of Section 1833 of the Social  
2 Security Act.

3 (m) "Policy form" means the form on which the policy is issued  
4 for delivery by the issuer.

5 (n) "Secretary" means the Secretary of the United States  
6 Department of Health and Human Services.

7 SEC. 58. Section 11655 of the Insurance Code is amended to  
8 read:

9 11655. Such policy shall not contain any provisions relieving  
10 the insurer from payment when the employer becomes insolvent  
11 or obtains a discharge in bankruptcy, or otherwise, during the  
12 period that the policy is in operation or the compensation remains  
13 owing.

14 SEC. 59. Section 15643 of the Probate Code is amended to  
15 read:

16 15643. There is a vacancy in the office of trustee in any of the  
17 following circumstances:

18 (a) The person named as trustee rejects the trust.

19 (b) The person named as trustee cannot be identified or does  
20 not exist.

21 (c) The trustee resigns or is removed.

22 (d) The trustee dies.

23 (e) A conservator or guardian of the person or estate of an  
24 individual trustee is appointed.

25 (f) The trustee is the subject of an order for relief in bankruptcy.

26 (g) A trust company's charter is revoked or powers are  
27 suspended, if the revocation or suspension is to be in effect for a  
28 period of 30 days or more.

29 (h) A receiver is appointed for a trust company if the  
30 appointment is not vacated within a period of 30 days.

31 SEC. 60. Section 4107 of the Public Contract Code is amended  
32 to read:

33 4107. A prime contractor whose bid is accepted may not:

34 (a) Substitute a person as subcontractor in place of the  
35 subcontractor listed in the original bid, except that the awarding  
36 authority, or its duly authorized officer, may, except as otherwise  
37 provided in Section 4107.5, consent to the substitution of another  
38 person as a subcontractor in any of the following situations:

39 (1) When the subcontractor listed in the bid, after having had a  
40 reasonable opportunity to do so, fails or refuses to execute a written

1 contract for the scope of work specified in the subcontractor's bid  
2 and at the price specified in the subcontractor's bid, when that  
3 written contract, based upon the general terms, conditions, plans,  
4 and specifications for the project involved or the terms of that  
5 subcontractor's written bid, is presented to the subcontractor by  
6 the prime contractor.

7 (2) When the listed subcontractor becomes insolvent or the  
8 subject of an order for relief in bankruptcy.

9 (3) When the listed subcontractor fails or refuses to perform his  
10 or her subcontract.

11 (4) When the listed subcontractor fails or refuses to meet the  
12 bond requirements of the prime contractor as set forth in Section  
13 4108.

14 (5) When the prime contractor demonstrates to the awarding  
15 authority, or its duly authorized officer, subject to the further  
16 provisions set forth in Section 4107.5, that the name of the  
17 subcontractor was listed as the result of an inadvertent clerical  
18 error.

19 (6) When the listed subcontractor is not licensed pursuant to  
20 the Contractors License Law.

21 (7) When the awarding authority, or its duly authorized officer,  
22 determines that the work performed by the listed subcontractor is  
23 substantially unsatisfactory and not in substantial accordance with  
24 the plans and specifications, or that the subcontractor is  
25 substantially delaying or disrupting the progress of the work.

26 (8) When the listed subcontractor is ineligible to work on a  
27 public works project pursuant to Section 1777.1 or 1777.7 of the  
28 Labor Code.

29 (9) When the awarding authority determines that a listed  
30 subcontractor is not a responsible contractor.

31 Prior to approval of the prime contractor's request for the  
32 substitution, the awarding authority, or its duly authorized officer,  
33 shall give notice in writing to the listed subcontractor of the prime  
34 contractor's request to substitute and of the reasons for the request.  
35 The notice shall be served by certified or registered mail to the  
36 last known address of the subcontractor. The listed subcontractor  
37 who has been so notified has five working days within which to  
38 submit written objections to the substitution to the awarding  
39 authority. Failure to file these written objections constitutes the  
40 listed subcontractor's consent to the substitution.

1 If written objections are filed, the awarding authority shall give  
2 notice in writing of at least five working days to the listed  
3 subcontractor of a hearing by the awarding authority on the prime  
4 contractor's request for substitution.

5 (b) Permit a subcontract to be voluntarily assigned or transferred  
6 or allow it to be performed by anyone other than the original  
7 subcontractor listed in the original bid, without the consent of the  
8 awarding authority, or its duly authorized officer.

9 (c) Other than in the performance of "change orders" causing  
10 changes or deviations from the original contract, sublet or  
11 subcontract any portion of the work in excess of one-half of 1  
12 percent of the prime contractor's total bid as to which his or her  
13 original bid did not designate a subcontractor.

14 SEC. 61. Section 11923 of the Revenue and Taxation Code is  
15 amended to read:

16 11923. (a) Any tax imposed pursuant to this part shall not  
17 apply to the making, delivering, or filing of conveyances to make  
18 effective any plan of reorganization or adjustment that is any of  
19 the following:

20 (1) Confirmed under the Federal Bankruptcy Code, as amended.

21 (2) Approved in an equity receivership proceeding in a court  
22 involving a railroad corporation, as defined in Section 101 of Title  
23 11 of the United States Code, as amended.

24 (3) Approved in an equity receivership proceeding in a court  
25 involving a corporation, as defined in Section 101 of Title 11 of  
26 the United States Code, as amended.

27 (4) Whereby a mere change in identity, form, or place of  
28 organization is effected.

29 (b) Subdivision (a) shall only apply if the making, delivery, or  
30 filing of instruments of transfer or conveyances occurs within five  
31 years from the date of the confirmation, approval, or change.

32 SEC. 62. Section 9185 of the Streets and Highways Code is  
33 amended to read:

34 9185. Executors, administrators, special administrators and  
35 guardians may consent for any property of the estate represented  
36 by them. Any trustee of an express trust of land other than as  
37 security for the payment of money may consent for all or any part  
38 of the land held in such trust. A trustee in bankruptcy may consent  
39 for all or any part of the property of the debtor. Such executors,

1 administrators, guardians and trustees are deemed owners of land  
2 within the meaning of this division.

3 SEC. 63. Section 9859 of the Vehicle Code is amended to read:

4 9859. All money received by an agent from the sale of  
5 certificates of number or temporary certificates of number and use  
6 tax shall be kept separate and apart from any other funds of the  
7 agent, and shall at all times belong to the state.

8 In case of an assignment for the benefit of creditors, receivership,  
9 or bankruptcy, the state shall have a preferred claim against the  
10 assignee, receiver, or trustee for all moneys owing the state for the  
11 sale of certificates as provided in this code and any use tax, and  
12 shall not be estopped from asserting such claim by reason of the  
13 commingling of funds or otherwise.